

FILED

MAR 21 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA
530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name LOSNO RAFAEL A
(Last) (First) (Initial)

Prisoner Number C-73252

Institutional Address SAN QUENTIN STATE PRISON, SAN QUENTIN, CA 94974

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CV 08

1572

RAFAEL ALBERTO LOSNO

Full Name of Petitioner

Case No. (To be provided by the clerk of court)

vs.

Röbert L. Ayers Warden,

PETITION FOR A WRIT OF HABEAS CORPUS

Name of Respondent
(Warden or jailor)

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

08-1572 WHA

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

County of Commitment: San Mateo

County of Confinement: Marin

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

<u>San Mateo County Superior Court</u>	<u>Redwood City</u>
Court	Location

(b) Case number, if known C10551

(c) Date and terms of sentence 1981 and resentenced in 1983

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes No

Where? San Quentin State Prison, San Quentin, CA 94974

(Name of Institution)

(Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

Second Degree Murder

3. Did you have any of the following?

Arraignment: Yes X No ___ Preliminary Hearing: Yes X No ___ Motion to Suppress: Yes ___ No ___

4. How did you plead?

Guilty X Not Guilty _____ Nolo Contendere _____

Any other plea (specify) Plea Bargain, no enhancements or special circumstances

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone _____ Judge alone on a transcript _____

6. Did you testify at your trial? Yes ___ No ___

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes ___ No ___
- (b) Preliminary hearing Yes ___ No ___
- (c) Time of plea Yes ___ No ___
- (d) Trial Yes ___ No ___
- (e) Sentencing Yes ___ No ___
- (f) Appeal Yes ___ No ___
- (g) Other post-conviction proceeding Yes ___ No ___

8. Did you appeal your conviction? Yes ___ No ___

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes ___	No ___	_____	_____
			(Year)	(Result)
Supreme Court of California	Yes ___	No ___	_____	_____
			(Year)	(Result)
Any other court	Yes ___	No ___	_____	_____
			(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes ___ No ___

(c) Was there an opinion? Yes ___ No ___

(d) Did you seek permission to file a late appeal under Rule 31(a)?
Yes ___ No ___

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No ☐

California Superior Court, County of San Mateo: Petition for writ of habeas corpus same grounds as in instant petition.

California Court of Appeal, in and for the First Appellate District of California: Petition for writ of habeas corpus, same grounds as in instant petition.

California Supreme Court: Petition for Review, same grounds as in instant petition.

Court of Appeal, First Appellate District, Div. 3 - No. A119721
S159364

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re RAFAEL LOSNO on Habeas Corpus

The petition for review is denied.

George, C.J., and Corrigan, J., were absent and did not participate.

**SUPREME COURT
FILED**

FEB 27 2008

Frederick K. Ohlrich Clerk

Deputy

BAXTER

Acting Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

COA
FILED

DEC 11 2007

Court of Appeal - First App. Dist.
DIANA HERBERT

By _____
DEPUTY

In re RAFAEL LOSNO,
on Habeas Corpus.

A119721

(San Mateo County
Super. Ct. Nos. SC-10551A;
HC-1943)

THE COURT:*

The petition for a writ of habeas corpus is denied.

Dated: DEC 11 2007

McGUINNESS, P.J. P.J.

* McGuinness, P.J. & Horner, J. (Judge of the Alameda Super. Ct., assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.), participating. Pollak, J. dissents from the decision to summarily deny the petition.

POLLAK, J.—Dissenting.

This is yet another case the ultimate outcome of which is dependent on resolution of the proper standard of review, an issue now pending before our Supreme Court. (*In re Lawrence*, review granted Sept. 19, 2007, S154018 [2007 Cal. Lexis 10073].) If no more is required to uphold the denial of parole than some evidence that the petitioner committed a horrible crime—i.e., one “in an especially heinous, atrocious, or cruel manner” (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1))—it may be that the record supports the determination of the Board of Parole Hearings (the Board) in this case.¹ If that is the standard, petitioner can be denied parole forever for the crime he committed more than 26 years ago, despite his subsequent undisputed salutary efforts at personal improvement and the low risk of recidivism he presents. However, if, as a growing number of cases have held, what is required is some competent evidence tending rationally to show that he “will pose an unreasonable risk of danger to society if released from prison” (Cal. Code Regs., tit. 15, § 2402, subd. (a)), the Board’s finding of unsuitability clearly cannot be sustained.² (E.g., *In re Dannenberg* (Nov. 16, 2007, H030031) __ Cal.App.4th __ [2007 Cal.App. Lexis 1865]; *In re Barker* (2007) 151 Cal.App.4th 346, 366; *In re Weider* (2006) 145 Cal.App.4th 570, 589; *In re Scott* (2005) 133 Cal.App.4th 573, 595.) What the Sixth Appellate District said in overturning the

¹ Even this is not entirely clear. The petitioner was one of several gang members who clubbed another youth to death—unquestionably a brutal and senseless crime. However, although the petitioner admittedly struck the victim, the record is inconclusive as to whether he did so only on the victim’s leg or whether he also struck the victim on the head.

² Without taking the time to summarize petitioner’s exemplary record while in prison and the favorable psychological evaluations he has received, it is perhaps sufficient to note that even the deputy district attorney who appeared before the Board indicated that his office took no position on petitioner’s suitability for parole and that he “can’t help be impressed with everything he’s done since” commission of the single offense for which he has been imprisoned. (Petn., exh. A, p. 113.) The assistant district attorney did question whether petitioner was “being entirely forthright about what happened in the crime” (*ibid.*) some 26 years in the past, but before the Board petitioner did acknowledge that he “probably hit [the victim] in the head, too” (*id.* at p. 103).

Governor's denial of parole in *In re Dannenberg*, is equally applicable to the petitioner here: "It is not the mere passage of time that deprives [petitioner's] commitment offense of predictive value with respect to the risk he may pose to society. The quantity and quality of [petitioner's] consistent and spotless record of upstanding conduct for the last 20 years, coupled with the absence of any negative factors and the presence of every conceivable favorable factor, combine to eliminate any modicum of predictive value that his commitment offense once had. The record before the Board . . . lacks any support for the . . . conclusion that, due to the nature of his commitment offense, [petitioner] poses a current, unreasonable risk of danger to society if released." (*In re Dannenberg, supra*, __ Cal.App.4th __ [2007 Cal.App. Lexis 1865, at p. *25].)

In my view, these latter cases reflect the correct standard. There is absolutely no evidence that petitioner presents a significant risk of reoffending and he is therefore entitled to be released on parole.

POLLAK, J.

Pollak, J.

FILED
SAN MATEO COUNTY

OCT 22 2007

Clerk of the Superior Court

By DEPUTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

In re:)	Case No. SC-10551 A
)	HC-1943
RAFAEL LOSNO)	
On Habeas Corpus.)	ORDER OF DENIAL
)	
)	

The Court has received and reviewed the Petition for Writ of Habeas Corpus filed by Petitioner, Rafael Losno on September 13, 2007. The petition is hereby denied.

In 1981, Petitioner entered a plea of nolo contendere to one count of second degree murder (PC § 187). He was subsequently sentenced to fifteen years to life in prison.

On December 18, 2006, the Board of Parole Hearings (BPH) denied parole for one year, ruling that Petitioner would pose an "unreasonable risk of danger to society or a threat to public safety if released from prison" based on the cruel and callous and dispassionate and calculated manner in which the crime was carried out (TX of 12/16/06 hearing at p. 119). The

1 15 year-old victim was beaten to death by three assailants,
2 including Petitioner, wielding baseball bats and a golf club
3 after he had fallen to the ground (Id. at pp. 119-121) The
4 offense demonstrated an exceptionally callous disregard for
5 human suffering and the apparent motive, which involved an
6 exchange of gang epithets, was very trivial in relation to the
7 offense (Id. at p. 120). Petitioner has thirty two 128(a)
8 counseling chronos and seven 115's (Id. at p. 121). Petitioner
9 did have parole plans, but his important letters were outdated
10 and not specific enough (Id. at pp. 122-123.) Though
11 Petitioner had a generally supportive psych report and
12 exceptional programming, there needed to be more insight into
13 his role in the commitment offense as well as his gang
14 affiliation inside the institution in the initial years (Id. at
15 pp. 121-125). The Board noted that its decision was not easy,
16 but that the positive aspects of his behavior did not outweigh
17 the factors of unsuitability (Id. at p. 124).

18
19 Petitioner argues that the Board's decision lacked "some
20 evidence" as to the ultimate issue: that he would subject
21 society to an unreasonable risk of danger to public safety, and
22 that therefore it contravened his due process rights. He also
23 argues that the Board should have analyzed his eligibility as
24 if he had been convicted of first degree murder, since he would
25 already have been eligible for parole had he been convicted of
26 first degree murder.

1 THE DECISION OF THE BOARD OF PRISON TERMS TO DENY PETITIONER
2 A PAROLE RELEASE DATE WAS PROPER.

3 A petition for writ of habeas corpus is proper to
4 challenge a denial of parole by the Board of Prison Terms. (In
5 re Sena (2001) 94 Cal.App.4th 836, 840.)

6
7 "...[T]he judicial branch is authorized to review the
8 factual basis of a decision of the Board denying parole in
9 order to ensure that the decision comports with the
10 requirements of due process of law, but that in conducting
11 such a review, the court may inquire only whether some
12 evidence in the record before the Board supports the
13 decision to deny parole, based upon the factors specified
14 by statute and regulation. If the decision's consideration
15 of the specified factors is not supported by some evidence
16 in the record and thus is devoid of a factual basis, the
17 court should grant the prisoner's petition for writ of
18 habeas corpus and should order the Board to vacate its
19 decision denying parole and thereafter to proceed in
20 accordance with due process of law. (See *In re Ramirez*,
21 *supra*, 94 Cal.App.4th at p. 572; *In re Bowers* (1974) 40
22 Cal. App. 3d 359, 362, 114 Cal. Rptr. 665.)"

23 (In re Rosenkrantz (2002) 29 Cal.4th 616, 658.)

24
25 "[T]he gravity of the commitment offense or offenses alone
26 may be a sufficient basis for denying a parole application, so
27 long as the Board does not fail to consider other relevant
28 factors." (In re Ramirez (2001) 94 Cal.App.4th 549, 569
29 overruled on other grounds in In re Dannenberg (2005) 34
30 Cal.4th 1061, 1100; citing In re Seabock (1983) 140 Cal.App.3d
31 29, 37-38.) "The Legislature has provided that the Board may
32 refuse to set a parole release date if 'it determines that the
33 gravity of the current convicted offense or offenses, or the
34 timing and gravity of current or past convicted offenses, is

1 such that consideration of the public safety requires a more
2 lengthy period of incarceration.' Pen. Code § 3041, subd. (b),
3 *italics added.*)" (Ramirez, supra, 94 Cal.App.4th at p. 569.)
4

5 Based on a review of the information submitted by
6 Petitioner, the BPH did not abuse its discretion when it denied
7 Petitioner a parole release date in 2006. The Board properly
8 considered the gravity and circumstances of the commitment
9 offense as provided for under California law. Rather than
10 systematically denying Petitioner parole, the Board considered
11 the activities he participated in while he was incarcerated,
12 his evaluations, and his institutional behavior, as provided in
13 15 CCR 2402. After considering all of this information, as
14 required, the board came to a decision that was proper as there
15 was some evidence in the record to support it. Having
16 concluded that Petitioner was not suitable for parole by
17 pointing to some evidence that the particular circumstances of
18 his crime beyond the minimum elements of his conviction
19 indicated exceptional callousness and cruelty, the Board was
20 not required to compare Petitioner's crime to other second
21 degree murders. (See In re Dannenberg, supra, 34 Cal.4th at
22 1098.)
23

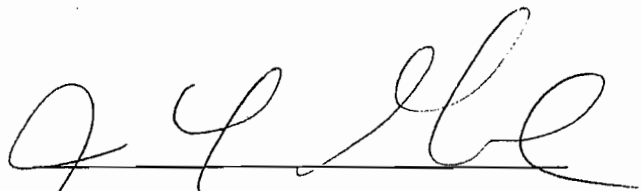
24 Similarly, no binding authority required the Board to
25 compare Petitioner's crime to a first degree murder, since the
26 language quoted by Petitioner for this proposition came from
27 Justice Moreno's *concurring opinion* in Rosenkrantz, supra, 29
28 Cal.4th at p. 690. The BPH not having abused its discretion in

1 its decision that Petitioner would pose an unreasonable risk of
2 danger to society , this Court cannot order it to exercise its
3 discretion differently.

4
5 **CONCLUSION**

6
7 When a petition for writ of habeas corpus fails to reveal
8 sufficient facts which, if true, would establish a prima facie
9 case for relief, summary denial is appropriate. (In re Clark
10 (1993) 5 Cal.4th 750, 769.) For the foregoing reasons, the
11 petition for writ of habeas corpus is hereby denied.

12
13 DATED: OCT 17 2007

14 

15 John L. Grandsaert
16 Presiding Judge, Criminal
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Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court California Superior Court, in and for San Mateo County.

Type of Proceeding Habeas corpus petition.

Grounds raised (Be brief but specific):

Same grounds as in instant petition.

a. _____

b. _____

c. _____

d. _____

Result Denied Date of Result October 22, 2007

II. Name of Court California Court of Appeal, Sixth District.

Type of Proceeding Habeas Corpus Petition

Grounds raised (Be brief but specific):

Same as in instant petition.

a. _____

b. _____

c. _____

d. _____

Result Denied Date of Result December 11, 2007

III. Name of Court California Supreme Court

Type of Proceeding Petition for Review, Habeas corpus petition.

Grounds raised (Be brief but specific):

a. Same as in instant petition.

b. _____

c. _____

d. -

Result Denied. Date of Result February 27, 2008

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ☐ No ☒

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: See Insert A, PAGES LABELED A1 THROUGH A6

Ground 1

THE BOARD OF PAROLE HEARINGS VIOLATED PETITIONER'S STATE AND FEDERAL DUE PROCESS WHEN IT DID NOT APPLY THE PROPER CRITERIA AND ITS DECISION DENYING PETITIONER PAROLE WAS NOT SUPPORTED BY SOME EVIDENCE.

A. Due Process Requires That Some Evidence Support A Parole Denial

On December 18, 2006, Petitioner was denied parole primarily on the grounds of the May 15, 1981 crime being "carried out in a very cruel and callous manner." (Exhibit A, December 18, 2006, Board Transcripts, p. 119.) The record shows that Board ignored the avalanche of evidence of rehabilitation in petitioner's institution record, wherein the Board deemed as "Truly outstanding group participation, self-help groups, contributing to the outside from the inside. A lot of self-development here in terms of the vocations and education and outstanding." (Exhibit A, p. 125.)

A California prisoner with a sentence of a term of years to life with the possibility of parole has a protected liberty interest in release on parole and therefore a right to due process in the parole suitability proceedings. See Sass, 461 F.3d at 1127-28; Board of Pardons v. Allen, 482 U.S. 369 (1987); Greenholtz v. Inmate of Nebraska Penal & Corr. Complex, 442 U.S. 1 (1979); Cal. Penal Code § 3041(b).

A parole board's decision satisfies the requirement of due process if "some evidence" supports the decision. Sass, 461 F.3d at 1128-29 (adopting some evidence standard for disciplinary hearings outlined in Superintendent v. Hill, 472 U.S. 455, 454-55 (1985)). However, some evidence "must have some indicia of reliability" (Scott I, supra, 119 Cal.App.4th at p. 899) and "suitability determinations must have some rational basis in fact." (In re Elkins, supra, 144 Cal.App.4th at p. 489.)

As the California Supreme Court has summarized it, "the judicial branch is authorized review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements

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of due process of law, but ... in conducting such a review, the court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based upon the factors specified by the statute and regulation. If the decision's consideration of the specified factors is not supported some evidence in the record and thus is devoid of a factual basis, the court should grant the prisoner's petition for writ of habeas corpus and should order the Board to vacate its decision denying parole and thereafter to proceed in accordance with due process of law." (In re Rosenkrantz, 29 Cal.4th at p. 658, emphasis added.)

In In re Sandra Lawrence, ___ Cal.App.4th ___, 2007 WL 1475283, the Court analyzed in historic detail the standard of review for California and federal due process. After reviewing: Rosenkrantz, Dannenberg, McQuillion, Sass, Biggs, and Irons, the Court concluded:

Combining the California and federal standards of review, as they have been articulated thus far by the California Supreme Court and the Ninth Circuit, respectively, the commitment crime can lack the power to supply "some evidence" supporting a denial of parole because of the interplay between two factors - the nature of that crime and the passage of time since its commission. That is, the fact there is "some evidence" the crime was committed and committed a certain way at a certain time does not mean that crime necessarily represents "some evidence" the prisoner's release on parole will pose an unreasonable risk of danger to public safety at the present time. Whether it possesses the necessary predictive value depends both on the nature of the crime and how long ago it happened.

(In re Lawrence (2007) 150 Cal.App.4th 1511; see also In re Gray (2007) 151 Cal.App.4th 379; and In re Barker (2007) 151 Cal.App.4th 346.)

The Lawrence court also explained that "it is not just 'some evidence' to support the [Board's] findings, but 'some evidence' sufficient to satisfy the statute's ultimate test, that is, 'some evidence' the release of [Lawrence] would subject society to an 'unreasonable risk' of danger to public safety." (Id.)

INSERT A

B. The Board's December 2006 Decision Denying Petitioner Parole Based on the Commitment Offense Was Not Supported by Some Evidence

1. The Circumstances of Petitioner's Commitment Offense Does Not Support the Board's Parole Denial

"The nature of the prisoner's offense, alone can constitute a sufficient basis for denying parole." (Rosenkrantz, supra, 29 Cal.4th at p. 682, 128 Cal.Rptr.2d 104, 59 P.3d 174.) However, Chief Justice George noted in the next paragraph, "In some circumstances, a denial of parole based upon the nature of the offense alone might rise to the level of a due process violation - for example where no circumstances of the offense reasonably could be considered more aggravated or violent than the minimum necessary to sustain a conviction for that offense... 'The Board's authority to make an exception [to the requirement of setting a parole date] based on the gravity of a life term inmate's current or past offenses should not operate so as to swallow the rule that parole is "normally" to be granted.... [A] life term offense or any other offenses underlying an indeterminate sentence must be particularly egregious to justify the denial of a parole date.'" (Rosenkrantz, supra, 29 Cal.4th at p. 683, 128 Cal.Rptr.2d 104, 59 P.3d 174.)

Petitioner was convicted of second degree murder and sentenced to a term of 15 years-to-life with the possibility of parole. With custody credits, at the time of his December 2006 hearing he had been in custody over 25 years, over 15 years beyond his Minimum Eligible Parole Date. (Cal Code Regs. tit. 15, § 2403.) With good time credits, he has served a term of 37.5 years. Accordingly, Petitioner is now being punished as if he had been convicted of first degree murder with special circumstance.

When a person convicted of second degree murder is being punished as though the crime were first degree murder, then due process requires that Board's findings of exceptionality must be based on a comparison to instances

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of first degree murder. (In re Weider (2006) 145 Cal.App.4th 570, 582-583.)

If a comparison to first degree murder was not required in these situations, absurdly, Petitioner would be better off if he had been convicted of second first murder, because then there would be no questioning that the same crime facts would have to be examined by the Board to see if the murder was especially heinous for a first degree murder, rather than a second degree murder. More logically, the crime must now be evaluated for exceptionality against the elements of first degree murder. As the Court in In re Rosenkrantz, 29 Cal.4th 616 (Cal. 2002) "....there will come a point, which already may have arrived, when Petitioner would have become eligible for parole if he had been convicted of first degree murder. Once petitioner reaches that point, it is appropriate to consider whether his offense would still be considered especially egregious for a first degree murder in order to promote the parole statute's goal of proportionality between the length of sentence and the seriousness of the offense. (See In re Ramirez (2001) 94 Cal.App.4th 549, 570-571 [114 Cal.Rptr.2d 381] (In re Rosenkrantz, supra, 690 [Cal. 2002].)

While the Supreme Court in In re Dannenberg (2005) 34 Cal.4th 1061 [23 Cal.Rptr.3d 417, 104 P.3d 783] rejected the proposition that the Board must evaluate each case under standards of term uniformity, (Dannenberg, 34 Cal.4th 1061 at 1070 - 23 Cal.Rptr.3d at 420), it took nothing away from the Board's obligation to compare like crimes when trying to determine if the crime under review is exceptional. And to find that the facts of the crime render it exceptional, the criminal conduct must exceed the elements of the crime under review. The Supreme Court explained this in Dannenberg, (supra, at pp. 1094-1095.): "use of the phrase 'particularly egregious,' conveyed only that the violence or viciousness of the inmate's crime must be more than minimally necessary to convict him of the offense for which he is confined." (Id. at

INSERT A

p. 1095.) (See also In re Scott (2004) 119 Cal.App.4th 871, In re Smith (2003) 114 Cal.App.4th 343, 367, In re Smith (2003) 109 Cal.App.4th 489.)

In Rosenkrantz the Court observed vis-a-vis Rosenkrantz's commitment offense "Other than felony murders, first degree murders by definition involve premeditation and deliberation. Moreover, Petitioner pled guilty to second degree murder. Therefore, petitioner's offense did not partake of any those characteristics that make an offense particularly egregious under the Board of Prison Term's parole eligibility matrix for first degree murder, e.g., torture, the infliction of severe trauma not involving immediate death, or murder for hire. (Cal. Code Regs., tit. 15, § 2403, subd. (b).) Nor is it certain that Petitioner's lack of remorse immediately following the crime, by itself, would make the crime exceptional compared to other first degree murders." In re Rosenkrantz, supra, 616, 690 (Cal. 2002).

Rosenkrantz here is particularly apropos to the case at bar. There was no evidence to prove first degree murder, otherwise, it is reasonable to assume, Petitioner would have been convicted of first degree murder. As Petitioner's crime facts are not sufficient to place the crime in the category of a first degree murder, these same facts cannot constitute "some evidence" of exceptionality for a first degree murder.

Nor is Petitioner's crime "exceptional" pursuant to Title 15, § 2402(C)1.

The ultimate directive to the Board by Penal Code § 3041; California Code of Regulations, Title 15, § 2400 and the decided cases, is to make a determination as to whether or not Petitioner would now pose an unreasonable risk of danger to society if he were to be released.

The focus is on present time. The "some evidence" upon which the Board may rely to deny parole must be evidence of a present danger of Petitioner

INSERT A

committing a violent act against society if he is paroled.

In Thomas v. Brown, 2006 U.S. Dist. LEXIS 94460, 1-12 (D. Cal. 2006) the court itself looked at the current psychological evaluation and emphasizing the currency of the potential threat, faulted the Governor for relying on an old psychological evaluation and ignoring a more current one. Thomas v. Brown, supra, *24)

Similarly in Petitioner's case the Board ignored the evaluations of (Exhibit B p. 5.)

Had the Board fairly and impartially reviewed the relevant and reliable information available to it, rather than pick and chose that which most suited its predetermination to deny parole and ignore the rest (Exhibit B), the Board would have reached a different conclusion.

For the foregoing reasons, the Court should grant the petition, order the Board to release Petitioner immediately, and apply any custody credits that go beyond his calculated term toward his maximum three year parole period. (See In re Ernest Smith, DJDAR 6217.)

Supporting Facts: _____

Claim Two: _____

Supporting Facts: _____

Claim Three: _____

Supporting Facts: _____

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Do you have an attorney for this petition? Yes ☐ No ☒ **Petitioner request counsel due to the complexity of this case..**

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

March 12, 2008

Date

Rafael A. Lopez

Signature of Petitioner

CV 08

1572

EXHIBIT

"A"

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

INMATE

In the matter of the Life)
Term Parole Consideration)
Hearing of:) CDC Number C-73252
RAFAEL LOSNO)
_____)

SAN QUENTIN STATE PRISON

SAN QUENTIN, CALIFORNIA

DECEMBER 18, 2006

1:36 P.M.

PANEL PRESENT:

JANICE ENG, Presiding Commissioner
DEBORAH STAR, Deputy Commissioner

OTHERS PRESENT:

RAFAEL LOSNO, Inmate
PAT FOX, Attorney for Inmate
RICK GOOD, Deputy District Attorney
CORRECTIONAL OFFICERS UNIDENTIFIED

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Anna E. McGaughy

House of Scribes

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1 P R O C E E D I N G S

2 DEPUTY COMMISSIONER STAR: Okay. We're on
3 record.

4 PRESIDING COMMISSIONER ENG: Okay. Good
5 afternoon. This is a Subsequent Parole Consideration
6 Hearing for Rafael Losno, L-O-S-N-O, first name
7 R-A-F-A-E-L; CDC Number C-73252. Today's date is
8 December 18, 2006 and the time is 1:36 in the
9 afternoon. We are located at San Quentin State
10 Prison. The inmate was received on September 23, 1983
11 from San Mateo County. The life term began on
12 September 23, 1983. Minimum eligible parole date is
13 September 16, 1993. The controlling offense for which
14 the inmate has been committed is Murder, Second; Case
15 Number C-10551, Count One, Penal Code 187. The inmate
16 received a total term of 15 years to life. This
17 hearing is being tape-recorded so for the purpose of
18 voice identification, each of us will be required to
19 state our first and last names, spelling out our last
20 name. And sir, when it comes to your turn, after you
21 spell out your last name, please provide us with your
22 CDC number. So I'll begin and we'll move to my left.
23 My name is Janice Eng, E-N-G, Commissioner.

24 DEPUTY COMMISSIONER STAR: Deborah Star,
25 S-T-A-R, Deputy Commissioner.

26 DEPUTY DISTRICT ATTORNEY GOOD: My name is
27 Rick Good, G-O-O-D, Deputy District Attorney, San

1 Mateo County.

2 ATTORNEY FOX: Pat Fox, F-O-X, Attorney for
3 Mr. Losno.

4 INMATE LOSNO: Rafael Losno, L-O-S-N-O,
5 C-73252.

6 PRESIDING COMMISSIONER ENG: Thank you. And
7 for the record, we have two correctional officers
8 present for security reasons and they will not be
9 participating in the hearing. Before we begin, sir,
10 you will be required to read aloud the ADA Statement
11 in front of you so you can start anytime.

12 INMATE LOSNO: ADA Statement? "The
13 Americans With Disabilities Act, ADA, is a
14 law to help people with disabilities.
15 Disabilities are problems that make it
16 harder for some people to see, hear, read,
17 talk, walk, learn, think, work and take care
18 of themselves than it is for others. Nobody
19 can be kept out of public places or
20 activities because of a disability. If you
21 have a disability, you have the right to ask
22 for help to get ready for your BPT hearing,
23 get to the hearing, talk, read forms and
24 papers and understand the hearing process.
25 BPT will look at what you ask for to make
26 sure that you have a disability that is
27 covered by the ADA and that you have asked

1 for the right kind of help. If you do not
2 get help or if you don't think you got the
3 kind of help you need, ask for BPT 1074
4 Grievance Form. You can also get help to
5 fill it out.

6 **PRESIDING COMMISSIONER ENG:** Okay, thank
7 you. The record reflects that you did sign the BPT
8 Form 1073 on July 28 of 2006 and this form is a
9 Reasonable Accommodation Notice and Request, in
10 accordance with the provisions of the Americans With
11 Disabilities Act. And it does indicate that you do
12 not have any disabilities, as defined under the ADA.
13 Is that true?

14 **INMATE LOSNO:** Yes.

15 **PRESIDING COMMISSIONER ENG:** Okay. So this
16 information is still current and correct?

17 **INMATE LOSNO:** Yes.

18 **PRESIDING COMMISSIONER ENG:** Okay, good. I
19 still have to go through some of these questions with
20 you. Do you have any problems walking up and down
21 stairs or for distances of 100 yards or more?

22 **INMATE LOSNO:** No.

23 **PRESIDING COMMISSIONER ENG:** Okay. And do
24 you need any glasses or magnifying devices in order to
25 read any documents?

26 **INMATE LOSNO:** No, not yet.

27 **PRESIDING COMMISSIONER ENG:** So you'll be

1 fine today; right?

2 INMATE LOSNO: Yes.

3 PRESIDING COMMISSIONER ENG: Okay. But if
4 you do have a problem, just let us know. Do you have
5 any hearing impairments?

6 INMATE LOSNO: No.

7 PRESIDING COMMISSIONER ENG: Okay. Have you
8 ever been included in the Triple CMS or the EOP
9 Programs?

10 INMATE LOSNO: No, ma'am.

11 PRESIDING COMMISSIONER ENG: And you know
12 what those are?

13 INMATE LOSNO: Yes, I do.

14 PRESIDING COMMISSIONER ENG: Okay. Have you
15 ever taken any psychotropic medication, either in
16 prison or in the streets?

17 INMATE LOSNO: No.

18 PRESIDING COMMISSIONER ENG: Okay. And how
19 far did you get in school, sir?

20 INMATE LOSNO: Junior year in high school.

21 PRESIDING COMMISSIONER ENG: Okay. And have
22 you ever taken any Special Ed classes while you were
23 in school?

24 INMATE LOSNO: I did continuation at that
25 time so I could try to graduate.

26 PRESIDING COMMISSIONER ENG: But you didn't
27 have like Special Education classes while you were,

1 like, going in grade school or high school?

2 INMATE LOSNO: No, ma'am. Not that I can
3 remember.

4 PRESIDING COMMISSIONER ENG: Okay. Okay.
5 Do you suffer from any disability that would prevent
6 you from participating in today's hearing?

7 INMATE LOSNO: No.

8 PRESIDING COMMISSIONER ENG: Counsel, are
9 there any ADA issues that you believe need further
10 discussion regarding your client's ability to fully
11 participate in the hearing today?

12 ATTORNEY FOX: No. I think he'll be very
13 well able to participate.

14 PRESIDING COMMISSIONER ENG: Okay, fine.
15 This hearing is being conducted pursuant to the Penal
16 Code and the rules and regulations of the Board of
17 Parole Hearings governing parole consideration
18 hearings for life inmates. The purpose of today's
19 hearing is to once again consider your suitability for
20 parole. And in doing so, we'll consider the number
21 and nature of the crimes for which you were committed,
22 your prior criminal and social history, your behavior
23 and programming since your commitment and your plans
24 if released. We've had the opportunity to review your
25 central file and you will be given the opportunity to
26 correct or clarify the record. We will consider your
27 progress since your commitment, your counselor's

1 reports and your mental health evaluations. We will
2 focus on your progress and any new reports since your
3 last hearing so any changes in parole plans should be
4 brought to our attention. We will reach a decision
5 today and inform you whether or not we find you
6 suitable for parole and the reasons for our decision.
7 So if you are found suitable for parole, the length of
8 your confinement will be fully explained to you at
9 that time. Before we recess for deliberations, the
10 District Attorney's representative, who is present,
11 your attorney and you yourself will be given an
12 opportunity to make a final statement regarding your
13 parole suitability. So just remember that your
14 statement should be limited to why you feel you are
15 suitable for parole. We'll then recess, clear the
16 room and deliberate. Once we've completed our
17 deliberations, we'll resume the hearing and announce
18 our decisions. California Code of Regulations states
19 that regardless of time served, a life inmate shall be
20 found unsuitable for and denied parole if, in the
21 judgment of the Panel, the inmate would pose an
22 unreasonable risk of danger to society if released
23 from prison. You have certain rights. Those rights
24 include; the right to a timely notice of this hearing,
25 the right to review your central file and the right to
26 present relevant documents. Counselor, have your
27 client's rights been met?

1 **ATTORNEY FOX:** Yes, as to this hearing.

2 **PRESIDING COMMISSIONER ENG:** Okay. But you
3 have an additional right to be heard by an impartial
4 Panel. You've been introduced to this Panel. Do you
5 have any objections to it?

6 **INMATE LOSNO:** No.

7 **PRESIDING COMMISSIONER ENG:** Okay.
8 Counselor, any objections?

9 **ATTORNEY FOX:** No, no objection. Thank you.

10 **PRESIDING COMMISSIONER ENG:** Okay. Sir, you
11 will receive a copy of our written, tentative Decision
12 today and that Decision becomes final within 120 days.
13 So a copy of the Decision and a copy of the transcript
14 will be sent to you. On May 1, 2004, the regulations
15 regarding your right to appeal a Decision made at this
16 hearing were repealed. The current policy is entitled
17 Administrative Appeals, Correspondence and Grievances
18 Concerning Board of Prison Term Decisions. So you can
19 consult with your attorney if you have any questions
20 about it or you can review the policy at the prison
21 law library. You're not required to admit to or
22 discuss your offense. However, this Panel does accept
23 as true the findings of the court. Do you understand
24 what that means?

25 **INMATE LOSNO:** Yes.

26 **PRESIDING COMMISSIONER ENG:** Commissioner,
27 is there any confidential material in the files that

1 will be used today?

2 DEPUTY COMMISSIONER STAR: There's
3 confidential information but we will not be using it
4 today.

5 PRESIDING COMMISSIONER ENG: All right,
6 fine. Okay. I've already passed the Hearing
7 Checklist to your attorney, as well as to the District
8 Attorney's representative and we've each signed off on
9 it. And the reason why we do this is to make sure
10 that we're all operating off of the same set of
11 documents for the hearing. Okay. So that is marked
12 Exhibit 1. Okay. Counselor, were there any
13 additional documents to be submitted today?

14 ATTORNEY FOX: Not that we haven't already
15 submitted a little earlier today, including a couple
16 of certificates and a number of letters of support.

17 PRESIDING COMMISSIONER ENG: Right. I have
18 all these letters and I also have --

19 ATTORNEY FOX: And the parole plans.

20 PRESIDING COMMISSIONER ENG: -- Mr. Losno's
21 parole -- 2006 parole plans.

22 ATTORNEY FOX: Yes.

23 PRESIDING COMMISSIONER ENG: And then the
24 certificates. Okay.

25 ATTORNEY FOX: Thank you.

26 PRESIDING COMMISSIONER ENG: Do you have any
27 preliminary objections?

1 ATTORNEY FOX: No, thank you.

2 PRESIDING COMMISSIONER ENG: Okay. And will
3 your client be speaking with the Panel today?

4 ATTORNEY FOX: Yes, (indiscernible).

5 PRESIDING COMMISSIONER ENG: Okay. On all
6 matters?

7 ATTORNEY FOX: Yes.

8 PRESIDING COMMISSIONER ENG: Okay. Sir,
9 I'll have to swear you in them. Please raise your
10 right hand. Okay. Do you solemnly swear or affirm
11 that the testimony you give at this hearing will be
12 the truth, the whole truth and nothing but the truth?

13 INMATE LOSNO: Yes.

14 PRESIDING COMMISSIONER ENG: Okay. So we're
15 going to move on and what I'm going to do is read into
16 the record the Statement of Facts and I'm going to
17 take that from the Probation Officer's Report, page
18 two. Each of us should have that in the Board packet
19 under legal documents for the present offense.

20 "Records of the (indiscernible) Police
21 Department indicate that on June 5, 1981,
22 officers responded to the scene of a fight
23 with serious injuries sustained. Arriving
24 at the scene, they discovered a 15-year-old
25 victim that had been seriously wounded with
26 blows to his head, caused by baseball bats
27 and golf clubs. Additionally, a witness at

1 the scene had been attacked by baseball bats
2 by two of the participants, when they
3 attempted to intervene. The officers were
4 able to ascertain that two young, Latin
5 males had been in the vicinity of a
6 neighborhood grocery store when they were
7 attacked by four Latin males that had exited
8 a car that had stopped in the parking lot.
9 One of the young males in the area had been
10 fortunate in running into the store, while
11 the other youth, the ultimate victim, had
12 tripped and fallen in the parking lot. When
13 he tripped, two of the males from the
14 automobile swung at him with baseball bats
15 and golf clubs, causing immediate serious
16 injury that resulted in his death three days
17 later. The victim never regained
18 consciousness while in the hospital,
19 preceding his death. Further investigation
20 of this matter disclosed the identity of at
21 least one participant, which led to the
22 arrest of all four members of the gang. It
23 was then discovered that the four
24 participants in the attack were members of
25 the Little Park Street Gang out of the San
26 Francisco Mission District and the victim
27 was a reported member of a Daily City Youth

1 Gang. The Defendant and his co-attackers
2 have stated they had met with other members
3 of the Daily City Gang early in the day and
4 had chased them from the scene using
5 baseball bats. When they came up on the two
6 youths in the parking lot and through
7 identification established by dress,
8 gestures and attitudes, identified the
9 victim and his friend as Daily City Street
10 Gang members. Apparently, one member of the
11 (indiscernible) youths employed the driver,
12 Bustamonte, to stop the vehicle and" -- did
13 I miss something? No. "To stop the vehicle
14 and 'let's get him,' was stated to the
15 others. They then all exited the vehicle
16 and this Defendant Losno, L-O-S-N-O, along
17 with the oldest member of the gang, chased
18 the victim, striking him in the head with
19 baseball bats and gold clubs. The driver of
20 the vehicle, Bustamonte,
21 B-U-S-T-A-M-O-N-T-E, and the youngest member
22 of the gang, a juvenile, attacked a witness
23 who was attempting to intercede in the
24 attack. And that witness also suffered
25 injuries from being struck by baseball bats.
26 Fortunately, his injuries were not of a very
27 serious nature. An autopsy report performed

1 on the victim disclosed the cause of death
2 was serious injuries to the head caused by a
3 baseball bat and golf clubs. This
4 Defendant, Losno, admits to having struck
5 the victim with a baseball bat but denies
6 hitting him in the area of his head. Most
7 members of the gang were interviewed by
8 police officers, tended to identify the
9 oldest member of the gang, Richard Garcia,
10 G-A-R-C-I-A, as the person instigating the
11 attack and using the golf club, which may
12 have been the killing blow."

13 Do you have anything to add to that, Mr. Losno?

14 **INMATE LOSNO:** What you just read?

15 **PRESIDING COMMISSIONER ENG:** Yeah.

16 **INMATE LOSNO:** You want me to explain what
17 happened that day?

18 **PRESIDING COMMISSIONER ENG:** Yes.

19 **INMATE LOSNO:** Well, it's true what --
20 everything the report says here. That morning didn't
21 start off with the intentions to do that. That
22 morning started off -- it was an innocent morning,
23 really. An uncle of mine had came over to the house
24 and he asked me to come and go pay a cable bill in
25 that area in Daily City. He lived in Daily City at
26 the time. I did accompany him and at the time, my
27 girlfriend who was pregnant at the time, he was

1 speaking to me about what I'm about to face, the
2 responsibilities with my girlfriend. He gave me some
3 fatherly advice. He gave me some money
4 (indiscernible) that day. And when we returned back
5 to my house, the carload of the guys you just
6 mentioned right here were -- came to my house. It was
7 a gang, the Little Park Gang at that time and I did
8 associate with this group of people at that time.
9 Although I had distanced myself and dropped out of
10 that gang with these guys for a while, I still knew
11 them so I would see them when I'd go down to San
12 Francisco. They also lived in Daily City. They
13 offered me a ride to my girlfriend's house, who also
14 -- we all lived in Daily City.

15 PRESIDING COMMISSIONER ENG: Yes, but you
16 weren't a member of the Daily City (indiscernible)
17 Gang?

18 INMATE LOSNO: No. The Daily -- that's
19 Fogtown. I guess it was printed. It's Fogtown and
20 it's a gang called Daily City.

21 PRESIDING COMMISSIONER ENG: Okay. But you
22 were living in Daily City but not a member of that
23 gang?

24 INMATE LOSNO: No. No.

25 PRESIDING COMMISSIONER ENG: You were
26 affiliated with a gang out of San Francisco?

27 INMATE LOSNO: San Francisco, yes. And

1 Richard Garcia and Bustamonte and the people you
2 mentioned, we all lived in Daily City by the bar
3 station at that time, all in that area.

4 PRESIDING COMMISSIONER ENG: Well, how was
5 it that you were part of the San Francisco gang?

6 INMATE LOSNO: My mom lived in San Mateo
7 County, which is Daily City.

8 PRESIDING COMMISSIONER ENG: Um-hum.

9 INMATE LOSNO: I was born and raised in San
10 Francisco so the majority of the time, I went down to
11 San Francisco and I've got family in San Francisco.
12 And the reason why we were on our way to San
13 Francisco, we had a early doctor's appointment at the
14 hospital with my girlfriend, who was pregnant. We
15 were going down for family planning, a teen planning
16 appointment. And the whole purpose of going to San
17 Francisco that day was because I was going through the
18 steps of cutting the umbilical cord and going through
19 all that family planning.

20 PRESIDING COMMISSIONER ENG: Um-hum.

21 INMATE LOSNO: So from -- we left my house
22 and he offered to give me a ride to Maria's house, who
23 lived by Jefferson High School, which is right there
24 in the heart of where all this really transpired.
25 They waited for me as I went to go pick up Maria and
26 then they offered me a ride to San Francisco. On the
27 way down to San Francisco, we decided to party on the

1 way down. They were drinking beers and all that kind
2 of stuff. As we get to San Francisco General
3 Hospital, I drop off Maria and I continue to talk to
4 these guys. I didn't hang around with them but I knew
5 them.

6 **PRESIDING COMMISSIONER ENG:** Okay.

7 **INMATE LOSNO:** At that time, if I would have
8 known how to make my decisions up to say no, I'll stop
9 hanging around with these guys, I would have done
10 that. I just didn't know how to really break away
11 from these guys to not make them look at me as some
12 type of, you know, wuss or punk. That I didn't hang
13 around with these guys no more because I had washed my
14 hands with the Little Park Gang. So the thing was,
15 that in order to keep some type of communication, I
16 would speak to them so that's why I accepted the free
17 ride. So down to -- on the way down to the city we
18 dropped Maria off. We decided to park in the parking
19 lot. We drunk some beers there and took a ride.
20 Another area of San Francisco, the neighborhood that I
21 was raised in (indiscernible). We consumed some more
22 beer. They dropped me back off at the hospital and I
23 spent the rest of the day with Maria at the hospital.
24 After we finished our appointment there, they leave
25 and me and Maria were on our own, leaving General
26 Hospital and we were going back towards Mission Street
27 to wait for the bus to go back to Daily City. So

1 after the whole afternoon down there on 24th and
2 Mission where the buses pass by constantly -- the
3 (indiscernible) Mission. I still remember the 12
4 Ocean bus. On a summer day, June 5, I wanted to get
5 on the bus and a lot of guys who also were raised in
6 the area see me so we decided to start walking. And
7 instead of catching the bus, I ended up staying there
8 a little longer speaking to these guys and the hours
9 just progressed.

10 **PRESIDING COMMISSIONER ENG:** With Maria?

11 **INMATE LOSNO:** With Maria there, too. They
12 know Maria, also. We all from there. We all hung out
13 in the area. It's a busy street, like the strip with
14 the low-rider happening back then and all that.

15 **PRESIDING COMMISSIONER ENG:** Right.

16 **INMATE LOSNO:** So now when I want to get on
17 the bus, a lot of girls see Maria. They come down to
18 the school area as they come out there and they see
19 Maria and they all look at you. Girl talk -- she's
20 pregnant, more time went by. So finally as the bus
21 coming by, we decided to ignore the bus and these guys
22 are driving around. Spanky and Chino and Garcia;
23 they're all driving around in the car, driving around
24 the neighborhood and they kept on offering me rides
25 back to Daily City. We were like no, we're okay.
26 We're waiting for the bus. The hours continued and
27 finally it got a little later and when they asked me

1 one more time, "Hey, we're going to Daily City. Want
2 a ride?" I decided to accept the ride and we get into
3 the car with Maria. On the way back towards Daily
4 City that's when all this -- the unfortunately
5 inevitable happened. It wasn't meant on purpose. He
6 wasn't singled out to be killed how he was. But on
7 the way up, I was hoping -- because the street -- you
8 can get on the freeway on 30th and Mission. You can
9 get on the San Jose entrance to the freeway. We
10 usually get off at Eastmore Avenue and he can just
11 drop me off. That day, he decided to take the old
12 road so he drove Mission all the way up through the
13 back streets, all the way going up towards -- up
14 Mission (indiscernible).

15 PRESIDING COMMISSIONER ENG: How many of you
16 were in the car at this point?

17 INMATE LOSNO: It was Maria, myself,
18 Oscar Bustamonte, Richard Garcia, his brother and
19 another guy in the back seat. I don't know his name.
20 His name was Angel; that's what they called him. He
21 never got out of the car. He stood in the back seat.
22 He stood in the car.

23 PRESIDING COMMISSIONER ENG: The other guy?

24 INMATE LOSNO: Yeah, the other guy. He
25 never got out.

26 PRESIDING COMMISSIONER ENG: Was he an
27 active gang member?

1 INMATE LOSNO: He was in the gang. He just
2 didn't get out of the car that day.

3 PRESIDING COMMISSIONER ENG: But you did.

4 INMATE LOSNO: Yeah, I was the idiot that
5 followed the -- followed.

6 PRESIDING COMMISSIONER ENG: Yeah. Before
7 we get any further, let me ask you something. The
8 impression you give me is that you weren't an official
9 member of the gang. Or were you?

10 INMATE LOSNO: No, I used to run with them.

11 PRESIDING COMMISSIONER ENG: Okay.

12 INMATE LOSNO: I used to hang around with
13 them and I had dropped out.

14 PRESIDING COMMISSIONER ENG: Okay. And when
15 did you start running with the gang? How old were
16 you?

17 INMATE LOSNO: Eighteen.

18 PRESIDING COMMISSIONER ENG: Well, you were
19 19, weren't you, at the -- you were 19 years old for
20 the life crime?

21 INMATE LOSNO: I had just turned 19. I
22 barely started hanging around with this group.

23 PRESIDING COMMISSIONER ENG: You started
24 hanging around with them while you were living in
25 Daily City. You had long left San Francisco; correct?

26 INMATE LOSNO: No. I would hang out in San
27 Francisco. These are guys from --

1 **PRESIDING COMMISSIONER ENG:** But you weren't
2 living in San Francisco when you started hanging
3 around with them?

4 **INMATE LOSNO:** No. No, I was living with my
5 dad.

6 **PRESIDING COMMISSIONER ENG:** Had you ever --
7 when you were part of this gang during this time, what
8 types of illegal activities did you guys do? I mean,
9 was there any violence? Was there, you know, guns and
10 drive-by shootings or anything like that?

11 **INMATE LOSNO:** I never did experience --
12 this was all fairly new. It was (indiscernible) or
13 when the low-rider movement, as far as the
14 (indiscernible), you know. Low-riders just getting
15 started, you could say.

16 **PRESIDING COMMISSIONER ENG:** Um-hum. Okay.

17 **INMATE LOSNO:** And I just -- you know,
18 that's the neighborhood that we all grew up with and
19 we'd all hang on 24th. And it's such a big area where
20 a lot of guys don't really hang with each other
21 because they've got -- sometimes they say the squares.

22 **PRESIDING COMMISSIONER ENG:** Um-hum.

23 **INMATE LOSNO:** We'd carry (indiscernible)
24 and go to (indiscernible) and the other guys were hip
25 and they looked more like the troublemakers, you know.
26 And I'd try to pacify both groups because I was raised
27 on 17th and Mission and I know everybody there. So I'd

1 try to pacify both groups. And instead of hanging
2 around with the square group, I ended up hanging
3 around with these guys a little bit more. I was
4 working at the time at Candlestick Park and as I
5 started getting more of an idea of where this was
6 heading, before it got there, at least through the --
7 before it got really crazy with the rest of these
8 guys, that's when I started thinking. I said, you
9 know what? I'm going to drop out of this. And they
10 was just -- only there was seven of us and I washed my
11 hands of them but I still knew the guys.

12 PRESIDING COMMISSIONER ENG: Right.

13 INMATE LOSNO: So when I would see them it
14 was how you doing? You want a drink? Okay, we'll
15 drink a few beers. But little by little -- they used
16 to tease me, would you rather be with her, you're
17 wussed up. I'd say I'd rather be with her to know
18 where I'm going, either her house or my house
19 (indiscernible). The illegal activities were drinking
20 and hanging out at the pool halls or at the swimming
21 pool in the Mission District.

22 PRESIDING COMMISSIONER ENG: So that was
23 back around the late seventies and early eighties?

24 INMATE LOSNO: The early eighties.

25 PRESIDING COMMISSIONER ENG: Were they
26 dealing in drugs at that time?

27 INMATE LOSNO: We didn't. We smoked weed.

1 We did all that.

2 PRESIDING COMMISSIONER ENG: Right. But
3 there wasn't like heavy dealing and --

4 INMATE LOSNO: No, ma'am.

5 PRESIDING COMMISSIONER ENG: Was there --
6 did -- were gang members carrying guns and stuff like
7 that?

8 INMATE LOSNO: Well, I'm sure they was but I
9 didn't carry.

10 PRESIDING COMMISSIONER ENG: Right.

11 INMATE LOSNO: And the group that I was
12 with, the first or the main seven or eight guys who I
13 really associated with.

14 PRESIDING COMMISSIONER ENG: Um-hum.

15 INMATE LOSNO: It was mostly for girls.

16 PRESIDING COMMISSIONER ENG: But this group
17 that you happened to be with on that day, did any of
18 them typically have weapons on them, that you can
19 recall?

20 INMATE LOSNO: The older guy, Garcia --
21 Richard Garcia, he had just paroled out of prison.

22 PRESIDING COMMISSIONER ENG: Okay.

23 INMATE LOSNO: And to a lot of guys, he was
24 like --

25 PRESIDING COMMISSIONER ENG: They looked up
26 to him?

27 INMATE LOSNO: Yeah. And he wasn't a big

1 guy in stature.

2 PRESIDING COMMISSIONER ENG: Yeah.

3 INMATE LOSNO: And I wasn't sort of speaking
4 impressed by him as far as because he's some little
5 guy but he was older. He (indiscernible) and came out
6 of prison and he -- people looked up to him. I was
7 bigger than him because at that time I was still in
8 school. I played a lot of sports. I was bigger than
9 him so -- he (indiscernible), I'm sure, you know, he
10 was the guy that would kind of make you want to prove
11 yourself and say you know what? You're not that cool.
12 And me and my stupid thinking was, I'm going to prove
13 myself.

14 PRESIDING COMMISSIONER ENG: What was Garcia
15 in jail for?

16 INMATE LOSNO: Oh, I don't know. I had just
17 met him --

18 PRESIDING COMMISSIONER ENG: Okay.

19 INMATE LOSNO: -- maybe a week, two weeks.
20 Because I never met him. I didn't know him very long,
21 him or his brother.

22 PRESIDING COMMISSIONER ENG: Is Garcia the
23 one that was armed with the baseball bat?

24 INMATE LOSNO: I had the bat.

25 PRESIDING COMMISSIONER ENG: You had the bat
26 and who had the golf club?

27 INMATE LOSNO: He had the golf club.

1 **INMATE LOSNO:** It was Garcia? Okay. I
2 still wonder and try to explain to me, what possessed
3 you to get out of the car? Did you have a beef, a
4 personal beef? Did you have something against this,
5 the Daily City Gang?

6 **INMATE LOSNO:** Well, before that happened I
7 lived on St. Michael's Court in Daily City
8 (indiscernible) high school, Westmore (phonetic) High
9 School. And there were times when I didn't have any
10 beef with none of these guys but at that time, they
11 were making a name for themselves, too. They didn't
12 really like guys from San Francisco and my girlfriend
13 was from Daily City and she lived right in the heart
14 of Jefferson High School. So I would go down there to
15 pick up Maria and it was always that SFM -- they
16 called it San Francisco (phonetic). And it was the
17 only (indiscernible). At times I even had a pet
18 poodle so maybe it was the dog. Everyone had a pet
19 poodle. That was the big thing, to show up with a
20 dog. And so I didn't have confrontations with them
21 per se, but the older guys -- I looked a lot older
22 than I was. And a lot of the guys the majority of the
23 time was, they'd throw something at me, you know, beer
24 bottles. There was times when I would walk home from
25 Daily City. The top of the hill in Daily City, all
26 the way up the overpass and there was times when I'd
27 walk across the street they would chase me in a white

1 station wagons or vans and I'd have to run. So there
2 were times I'd get (indiscernible) because I was
3 treated in such a way. They didn't know me just
4 because I was from San Francisco and the Mission
5 District. They'd seen me down on the strip. That's
6 what -- that's the only thing that really could get
7 me, as far as my holding a grudge because they were
8 chasing me.

9 **PRESIDING COMMISSIONER ENG:** Had you ever
10 seen this -- the victim, Jorge Ruiz (phonetic) before?

11 **INMATE LOSNO:** I'd never met him. I never
12 knew him. The only thing I've met -- I knew of him --

13 **PRESIDING COMMISSIONER ENG:** You just saw
14 him in the parking lot that day?

15 **INMATE LOSNO:** He was standing in the
16 parking lot with some other guy and they were smoking
17 a joint. I remember that very, very clearly.

18 **PRESIDING COMMISSIONER ENG:** Okay.

19 **INMATE LOSNO:** And we were at a stop sign --
20 at a stoplight. And I remember we looked at a 7-11
21 because we had a 7-11. I was sitting in the back with
22 Maria and I remember we stopped at the red light and
23 looked out the window. And it was on the FT, Fogtown
24 on (indiscernible), hand signs. The guys in the car
25 were throwing back the San Francisco signs, all of us,
26 and there was more words exchanged. And before you
27 know it, we made the -- like a U-turn and jumped over

1 the little thing in the street and pulled up into the
2 -- this parking lot, the car. And we got to the car.
3 They waited and waited thinking that we -- the door --
4 the car wasn't going to get there. The doors wasn't
5 going to open. They did and so that's when they
6 scattered. The one guy decided to try to run to the
7 store. The other one ran the other way. The guys in
8 the front seat got out. I was in the back seat and I
9 followed them. I followed suit with them in the
10 chase.

11 PRESIDING COMMISSIONER ENG: Did you have a
12 baseball bat in the back seat with you?

13 PRESIDING COMMISSIONER ENG: There was bats
14 in the car.

15 PRESIDING COMMISSIONER ENG: So -- but you
16 made the conscious decision to grab the bat --

17 INMATE LOSNO: Yes, ma'am.

18 PRESIDING COMMISSIONER ENG: -- and jump out
19 of the back seat.

20 INMATE LOSNO: I reached out.

21 PRESIDING COMMISSIONER ENG: And Maria
22 stayed there and she was asking you not to?

23 INMATE LOSNO: Maria was yelling at me at
24 first. She was -- I mean she didn't think this was
25 going to even happen. When she saw me coming out,
26 taking out the base -- "Where are you going?"
27 Screaming at me, "Where are you going?" And I

1 followed suit. When we did what we did, when I did
2 what I did, I went over there and I hit him. He ran.
3 I came after him. He was tripping or I caused the
4 trip or he fell over one of those parking, white --
5 you know.

6 PRESIDING COMMISSIONER ENG: Right.

7 INMATE LOSNO: And when I get there, yes, I
8 hit him in the ankles and (indiscernible). I remember
9 that and I remember him saying, "Yeah, all right. All
10 right. Yeah, all right." And I could hear Maria
11 yelling in the car. So when I hear her yelling in the
12 car, I stopped and I looked at her and I go back to
13 her.

14 PRESIDING COMMISSIONER ENG: Did you take --
15 did you even notice how young he was when you hit him?

16 INMATE LOSNO: I didn't. No, I didn't
17 because he was -- like me, he had goatees. No one
18 ever stopped to -- he didn't look like a 15-year-old
19 kid, just like I didn't look like an 18-year-old kid.
20 And it happened so fast. When I ran back to the car,
21 as Maria had said, "I know him. I know his family."
22 That's when I remember, I get out of the car and I'm
23 yelling to these guys, "Stop. Let's get out of here.
24 Let's go." And therefore the only reason why, because
25 I stood out the car.

26 PRESIDING COMMISSIONER ENG: Can you think
27 of any reason why you would follow so seemingly

1 blindly these other guys that you didn't know that
2 well and beating up on a young kid like that? Can you
3 think of anything that triggered in your head that --
4 were you like all of a sudden very angry or something
5 towards this boy?

6 **INMATE LOSNO:** No, it was that although this
7 wasn't in my heart to do or the intentions wasn't to
8 do this. You know, after -- you know, when I stop and
9 I look at all of this, what it was to be honest is
10 that at that time, even though I had pulled away, I
11 hadn't yet pulled all away -- all the way away. I
12 needed -- it wasn't so much for adventure because
13 that's not what I was looking for. But when the
14 adrenaline takes over, I fell in to this -- I don't
15 want to blame it on peer pressure. In many ways it
16 was. There's no excuse for that. It wasn't
17 manipulated by people like go, go, go do it or -- it
18 was just something that, with the adrenaline moving so
19 fast, I decided to follow. And to do my part insofar
20 as to say that I'm not a -- I'm not a punk and I'm not
21 the one who's going to have to pay for this later,
22 afraid of any type of repercussions, as far as the guy
23 who stood in the car. That guy that stood in the car
24 next to Maria, he never came to prison but I know his
25 life became crazy. It was -- generally
26 (indiscernible) what I hear and what happened later on
27 was that he got to move away. Those are the things

1 that happen sometimes out of fear if you don't
2 participate in such a way. Repercussions come later.
3 So it wasn't meant to go out there and do something so
4 severe like that. It's to follow suit. And you know,
5 I realize now it was more than adrenaline. It was
6 still not wanting to let go all the way around, you
7 know. Even though we had consumed beers earlier that
8 day, I wasn't totally staggering drunk. It wasn't
9 like that but I know it somewhat had to do with it
10 because that's not my nature. That's not me. And to
11 this day, I constantly always more than double guess,
12 triple guess and I look at all this that brought me
13 here. And I replay it over and over and over because
14 when I spoke to his mom, that was one of those
15 confrontations where although she hit me and she beat
16 me, she had all the right to do so. I just stood
17 there and just let her wail at me, you know. And she
18 asked me what did I think about what I did and I told
19 her in Spanish. She was speaking in Spanish. At that
20 time my mom was standing next to me, too. Maria was
21 standing next -- on my right. My daughter was in a
22 little --

23 PRESIDING COMMISSIONER ENG: Stroller?

24 INMATE LOSNO: -- stroller. She reaches
25 over and she touches my daughter. And after, she
26 said, "Too bad his father -- your father won't be here
27 for a while." And she told me in Spanish, she said in

1 Spanish, "You destroyed my life." I told her I know
2 that she cannot find -- by me saying I'm sorry -- I
3 kept on speaking to her in Spanish. She just looked
4 at me and I just let her put her head on my chest
5 after she just ran out of energy. I just held her and
6 my mom spoke to her. The court proceedings started to
7 pick up and I remember her sitting out in the
8 audience, out there in the crowd. My family and
9 everyone else and what can I do but look at her?

10 PRESIDING COMMISSIONER ENG: So basically,
11 you wanted to be accepted by the fellow gang members.
12 You felt that it was easier to go along with them
13 versus refrain like the other guy did?

14 INMATE LOSNO: No so much wanting to be
15 accepted because they kind of looked up to me as being
16 the big homey because I was bigger than they were.
17 But --

18 PRESIDING COMMISSIONER ENG: Were all of you
19 about the same age?

20 INMATE LOSNO: No.

21 PRESIDING COMMISSIONER ENG: There were a
22 lot younger?

23 INMATE LOSNO: Yes. We were all just
24 friends. Chino, I think was -- I don't know. I think
25 he was maybe in his middle twenties.

26 PRESIDING COMMISSIONER ENG: Um-hum.

27 INMATE LOSNO: Garcia -- I think Spanky --

1 Bustamonte was something like 17, 16. I had just
2 turned 19. The guy in the back seat, I think he was
3 about 18 and Garcia's brother was 14 and Maria was 17.

4 PRESIDING COMMISSIONER ENG: Um-hum.

5 INMATE LOSNO: (indiscernible) was 15 so we
6 were all trying to live up to something we weren't.

7 PRESIDING COMMISSIONER ENG: What happened
8 after you found out that Mr. Ruiz did not survive the
9 beating? How did Maria react to you?

10 INMATE LOSNO: Well, Maria, being -- her
11 being my girlfriend and she had told me that she knew
12 the boy's father. That her father knew their family.
13 She supported me because I mean, she's -- not
14 supportive of what I did. Just stand by my side. And
15 I'm looking at her and she would ask me, "You scared?"
16 And I said, "Yeah, you know." I saw it on the news.
17 I went and spoke to my stepfather at the time and he
18 said, "We've got to tell your mother." And I was
19 looking at him. I told him exactly what I just told
20 you.

21 PRESIDING COMMISSIONER ENG: Um-hum.

22 INMATE LOSNO: And my uncle (indiscernible)
23 came by and he was like, stupid. And I'm like I've
24 got to tell my mother. So I go to my mother and my
25 mother says, "You know what you have to do." I went
26 and turned myself in and they came to my house first.
27 And Maria, before that -- taking me back with them and

1 she said, "You scared, babe?" I said, "Yeah, I'm
2 scared." We just were young and (indiscernible) I
3 turned myself in twice.

4 PRESIDING COMMISSIONER ENG: Commissioner,
5 do you have any questions to ask Mr. Losno?

6 DEPUTY COMMISSIONER STAR: Yes. Thank you,
7 Commissioner. Mr. Losno, how many beers did you drink
8 that day? Can you recall?

9 INMATE LOSNO: They were like -- they
10 weren't cans. They were like quarts. I'd say maybe
11 about three quarts. And it was regular beer. It was
12 like Old English malt liquor.

13 DEPUTY COMMISSIONER STAR: Okay. And did
14 you use any drugs that day?

15 INMATE LOSNO: Yeah, we smoked some weed.

16 DEPUTY COMMISSIONER STAR: Okay. Mescaline,
17 being weed to you?

18 INMATE LOSNO: That's what I was going to
19 say.

20 DEPUTY COMMISSIONER STAR: Okay. How much
21 and what time did you start doing that?

22 INMATE LOSNO: Well, when we left Maria's
23 house about maybe 8:30, 9:00. I can't remember. It
24 was morning (indiscernible).

25 DEPUTY COMMISSIONER STAR: So your
26 girlfriend's pregnant. Was she drinking beer and
27 smoking, too?

1 INMATE LOSNO: No.

2 DEPUTY COMMISSIONER STAR: But she's in the
3 car when all this is happening. So you bring your --
4 you decide to get involved with your pregnant
5 girlfriend in the car, not knowing if this gang is
6 going to retaliate and maybe hurt your pregnant
7 girlfriend? Did your mind even think of that?

8 INMATE LOSNO: When all this happened, at
9 the end of the day and that area of Daily City, we
10 call it Fogtown because about 3:00 o'clock, it's
11 foggy.

12 DEPUTY COMMISSIONER STAR: Um-hum.

13 INMATE LOSNO: In the morning when all this
14 -- when I went to her house and we left, it wasn't
15 like that. It was early morning. This was on the way
16 back. All of this we just said, this --

17 DEPUTY COMMISSIONER STAR: Um-hum.

18 INMATE LOSNO: -- happened -- well, actually
19 (indiscernible) by all that when I turned myself in
20 because this didn't happen right away. What you just
21 said did happen. Not to Maria but some of my
22 companions.

23 DEPUTY COMMISSIONER STAR: Well, you said
24 the bat was there. You didn't bring it in the car
25 with you?

26 INMATE LOSNO: No. That's what we called a
27 gangbang car. It was full of stuff.

1 DEPUTY COMMISSIONER STAR: So you got in the
2 car, you looked around. You could see the bat and the
3 golf clubs and you still didn't say pull over. Me and
4 my girlfriend gotta get out here. I mean, that wasn't
5 a red flag to you to see all this gang banging stuff
6 in the car?

7 INMATE LOSNO: At that time, I wasn't
8 thinking like that.

9 DEPUTY COMMISSIONER STAR: Okay.

10 INMATE LOSNO: My mind was -- when we
11 stopped at that red light, that was -- that didn't
12 even cross our mind. That didn't even cross my mind
13 until the hand signals, the FT and -- there's more
14 words that were said, you know.

15 DEPUTY COMMISSIONER STAR: Um-hum.

16 INMATE LOSNO: I don't want to say it.
17 Futos (phonetic) and just -- it's just a lot of
18 stupidity being yelled back from the store. And the
19 more -- even more ignorance coming out the car so we
20 just met up like that. It wasn't like that's him.
21 That's Jorge. That's -- or the other guy that was
22 with him. It wasn't like that.

23 DEPUTY COMMISSIONER STAR: Did they have any
24 weapons?

25 INMATE LOSNO: From what I understand, there
26 was a knife in Jorge's pocket and I --

27 DEPUTY COMMISSIONER STAR: Did he pull it?

1 INMATE LOSNO: No, I never --

2 DEPUTY COMMISSIONER STAR: He didn't have a
3 chance.

4 INMATE LOSNO: No.

5 DEPUTY COMMISSIONER STAR: You know, you
6 state to us that you were trying to pull away from the
7 gang. But the fact of getting in this gang-banging
8 car with all these weapons inside and then not trying
9 to get out sort of reflects differently. And you --
10 and from what you're stating, you hadn't been involved
11 that long and it was a short period of time; right?
12 From -- because you dropped out of school; right? And
13 then what; started hanging out with these guys?

14 INMATE LOSNO: Well, I'd come down to San
15 Francisco and I would see them. I was living in the
16 East Bay with my dad in San Lorenzo.

17 DEPUTY COMMISSIONER STAR: Uh-huh.

18 INMATE LOSNO: So the reason why I started
19 coming back more to the city was because of Maria so
20 we'd pick up --

21 DEPUTY COMMISSIONER STAR: Was she in the
22 gang, too, Maria?

23 INMATE LOSNO: She just know everybody.
24 Everyone who belonged to this gang and other streets.
25 What it is, is you've got 24th Street, you have Folsom
26 Street so they consider those gangs.

27 DEPUTY COMMISSIONER STAR: Yeah.

1 INMATE LOSNO: The Little Park Gang was a
2 little -- was a group of guys who hung around together
3 claiming they were parked outside 24th Street.

4 DEPUTY COMMISSIONER STAR: Uh-huh. But you
5 see, Mr. Losno, you're living in San Lorenzo. It's
6 almost like these were deliberate actions, you know,
7 being on the other side of the Bay and being in these
8 areas. It sounds pretty conscious decisions to me.
9 I'm not sure you're seeing how conscious. You say you
10 were pulling away but where you're hanging, when you
11 get in a car and you see all these things. They seem
12 pretty conscious to me. Now, where did you hit this
13 victim with this bat?

14 INMATE LOSNO: In the ankles, the legs and
15 shoulders.

16 DEPUTY COMMISSIONER STAR: How many hits?
17 Can you recall?

18 INMATE LOSNO: Maybe about three or four.

19 DEPUTY COMMISSIONER STAR: All right. I
20 think that's all the questions I have at this time.
21 Thank you.

22 PRESIDING COMMISSIONER ENG: Let's talk
23 about your previous record. According to what I see
24 here, that there is a -- no record of juvenile arrests
25 that were noted in your central file. Is that
26 correct?

27 INMATE LOSNO: Yes.

1 PRESIDING COMMISSIONER ENG: Okay. So you
2 really had a -- the only adult conviction and arrest
3 that you had is for this incident offense; correct?

4 INMATE LOSNO: Yes, ma'am.

5 PRESIDING COMMISSIONER ENG: So your trouble
6 really started when you started hanging around with
7 the gang friends of yours. Have I missed anything?
8 Were there any other arrests or anything that maybe
9 wasn't reflected in here?

10 INMATE LOSNO: Before that, the only thing I
11 ever had was a run in with the -- with the
12 (indiscernible) PD. That was going shopping. We were
13 going shopping for like, for me, for her and there was
14 a gathering of some youngsters in the alleyways. And
15 I ended up with the same guys who were part of the
16 gang and some guys who hang around the gang. There
17 was a fight and some chasing. Some type of brouhaha,
18 jumping off in the alleyway. And I'm there and the
19 police were over and it was --

20 DEPUTY COMMISSIONER STAR: Hold on, please.

21 PRESIDING COMMISSIONER ENG: That thing has
22 a habit of beeping for quite a few minutes before we
23 get to the end of the tape.

24 DEPUTY COMMISSIONER STAR: Yeah. Shall we
25 change it now, Ms. Eng?

26 PRESIDING COMMISSIONER ENG: That particular
27 one. It'll -- it's up to you because it can be

1 annoying, that beeping.

2 DEPUTY COMMISSIONER STAR: Okay.

3 PRESIDING COMMISSIONER ENG: Okay.

4 DEPUTY COMMISSIONER STAR: Let me see how
5 much we've got. Let's change it, okay? Everybody
6 just relax, all right?

7 PRESIDING COMMISSIONER ENG: Okay.

8 {TAPE 1 SIDE 2}

9 DEPUTY COMMISSIONER STAR: Okay. This is
10 side two of tape one in the Rafael Losno hearing,
11 C Number 73252. We're back on record.

12 PRESIDING COMMISSIONER ENG: Let's talk
13 about your personal background. You were born March
14 4, 1962?

15 INMATE LOSNO: Yes, ma'am.

16 PRESIDING COMMISSIONER ENG: Okay. And your
17 parents names were Maria Del Castillo and Rafael
18 Losno, Sr. And you were born in San Francisco?

19 INMATE LOSNO: Yes, ma'am.

20 PRESIDING COMMISSIONER ENG: Native San
21 Franciscoan, okay. Your father worked for Bolden
22 Grain in San Leandro. He's now retired. And your
23 mother owns her own cleaning service and she lives in
24 San Bruno.

25 INMATE LOSNO: San Mateo.

26 PRESIDING COMMISSIONER ENG: San Mateo now?
27 Okay. I'm taking all of this from the Board Report

1 that's dated March 2006. It states that -- oh, your
2 parents divorced when you were about nine so that's
3 why you were saying that you were -- did you go and
4 live with your father right away after your parents
5 divorced?

6 **INMATE LOSNO:** No. I lived with my mom all
7 my life on 17th and Michigan. Like in the lower San
8 Francisco.

9 **PRESIDING COMMISSIONER ENG:** Um-hum.

10 **INMATE LOSNO:** My dad finally did come back
11 into the picture. I have -- at that time, I had five
12 brothers and sisters, five of us total at that time.

13 **PRESIDING COMMISSIONER ENG:** Okay.

14 **INMATE LOSNO:** So he took us to go meet my
15 other brother, Marvin, and I lived with them in
16 Oakland. We get to San Lorenzo and my dad later on
17 buys a house. Now I'm already in high school, my high
18 school years.

19 **PRESIDING COMMISSIONER ENG:** Um-hum.

20 **INMATE LOSNO:** But I went to school out
21 there in East Bay for a while but I just couldn't stay
22 away from my mom, my grandmother and my grandfather,
23 the rest of my brothers and sisters. Living in
24 Oakland was okay. I kind of adapted to it. I did
25 (indiscernible). Then I went to San Lorenzo, which
26 was a whole different culture class. It wasn't the
27 same as being in Oakland or San Francisco or -- it was

1 a suburb community and we started experiencing
2 different racial type of treatment in San Lorenzo.
3 The homeowners and all of that. I was a city guy so I
4 would go back (indiscernible) back to my mom's house,
5 my grandfather's house. That's why I always went back
6 and forth until I got used to being out there. My dad
7 went out and bought a house (indiscernible) in San
8 Lorenzo at the time. It wasn't a nice place. It's a
9 beautiful place but as a kid, you know, keeping it
10 really real, it was boring out in that area at the
11 time so I would go back to the city. The city is the
12 city. And my mom, when she moved out of San Francisco
13 and went up -- a little higher up to the hill to Daily
14 City --

15 PRESIDING COMMISSIONER ENG: Um-hum.

16 INMATE LOSNO: -- so now I'm like,
17 (indiscernible) Daily City. In the East Bay, the only
18 family I had at that time was my dad and his wife.
19 And I didn't really -- they're divorced now. My dad
20 got remarried. But my immediate family, my whole
21 family; my kids, grandkids, they all live -- they
22 still live out there on this side of the Bay. So
23 that's why I'd come back to the San Francisco area
24 every Friday and then finally just decided to stay.

25 PRESIDING COMMISSIONER ENG: So you're one
26 of five children?

27 INMATE LOSNO: I'm one of seven.

1 PRESIDING COMMISSIONER ENG: One of seven?

2 Are you like the oldest or --

3 INMATE LOSNO: I'm the oldest now.

4 PRESIDING COMMISSIONER ENG: Now? What
5 happened to the oldest one?

6 INMATE LOSNO: He passed away.

7 PRESIDING COMMISSIONER ENG: How long ago?

8 INMATE LOSNO: In '97. As a matter of fact,
9 when my -- another sister of mine just -- she just
10 flew in (indiscernible). That's my dad when he was --
11 my dad is native Korean.

12 PRESIDING COMMISSIONER ENG: Oh.

13 INMATE LOSNO: So his early years out there
14 before he came to the States and met my mom, he had
15 his high school sweetheart out there that left him and
16 now she's here now.

17 PRESIDING COMMISSIONER ENG: Okay.

18 INMATE LOSNO: I never met her and she's
19 supposed to come this weekend or this week
20 (indiscernible).

21 PRESIDING COMMISSIONER ENG: Did any of your
22 other siblings, any of your six other siblings have
23 any problems with the law?

24 INMATE LOSNO: (no audible response)

25 PRESIDING COMMISSIONER ENG: You're the only
26 one?

27 INMATE LOSNO: I'm the only one. As a

1 matter of fact, they (indiscernible).

2 **PRESIDING COMMISSIONER ENG:** Let me ask you
3 something. Did your mother have any idea that you
4 were affiliated with a gang?

5 **INMATE LOSNO:** My mother knew that I hung
6 out in the Mission District. She knew as time was
7 going, I would come home later and later at night.
8 And I remember her (indiscernible). First it was
9 yelling. We'd argue. I was (indiscernible). And I
10 listened to her because I know she was not only my mom
11 but my dad all by herself all them years. And I
12 started staying in Daily City for a while instead of
13 going down to the Mission on the weekends. But in the
14 summertime, it was like hard to stay away from all the
15 girls and the low riders and all that other type of
16 stuff at that time.

17 **PRESIDING COMMISSIONER ENG:** Did you father
18 know also at that time what was going on?

19 **INMATE LOSNO:** My father, he knew that I was
20 hanging in San Francisco, hanging around with the guys
21 down there but he didn't know to what extent.

22 **PRESIDING COMMISSIONER ENG:** Um-hum.

23 **INMATE LOSNO:** And to this day, he blames my
24 mom, saying that he wanted to go live with you. Look
25 what happened. It's all within -- they get along.
26 They're great friends when they come to see me but
27 they still -- my dad harbors a little resentment to

1 that. But it's not my mom or my dad's fault. It's my
2 fault.

3 PRESIDING COMMISSIONER ENG: I think if you
4 think about it, you could understand that; couldn't
5 you?

6 INMATE LOSNO: Oh, I could indeed.

7 PRESIDING COMMISSIONER ENG: Being that
8 you're a parent now.

9 INMATE LOSNO: Yeah, a grandfather.

10 PRESIDING COMMISSIONER ENG: You're a
11 grandfather? Goodness. Okay. Because I see that you
12 had two children with Maria.

13 INMATE LOSNO: Yes.

14 PRESIDING COMMISSIONER ENG: Okay. So --
15 and they're two girls?

16 INMATE LOSNO: Yes.

17 PRESIDING COMMISSIONER ENG: So Angelica was
18 the one that Maria was pregnant with --

19 INMATE LOSNO: Right.

20 PRESIDING COMMISSIONER ENG: -- when you
21 committed this crime. Okay. So but you were married.
22 So you ended up marrying Maria?

23 INMATE LOSNO: Yes, ma'am.

24 PRESIDING COMMISSIONER ENG: When did you
25 get married?

26 INMATE LOSNO: '82.

27 PRESIDING COMMISSIONER ENG: Okay, yeah.

1 Because the Board Report -- two Board Reports in a row
2 state that it was '93.

3 INMATE LOSNO: No.

4 PRESIDING COMMISSIONER ENG: So that's why I
5 was wondering. So -- because I saw in the '03 Board
6 Report it states that, like, somebody had written in
7 1982 and then you divorced in '84? Is that true?

8 INMATE LOSNO: Well, I was -- we were
9 divorced in '84. We got married in '82.

10 PRESIDING COMMISSIONER ENG: Oh, I'm sorry.
11 In '82, you were -- yeah, '82 married. Divorced '84,
12 okay. But are you in touch with her?

13 INMATE LOSNO: Maria?

14 PRESIDING COMMISSIONER ENG: Yeah.

15 INMATE LOSNO: We've spoken. You know, I've
16 written her and a lot of it was a lot of hurt for her
17 because she went through some medical issues now.

18 PRESIDING COMMISSIONER ENG: Um-hum.

19 INMATE LOSNO: And for many, many years we
20 didn't speak and that was because I was upset. I
21 wouldn't see my daughters and I know my daughters were
22 asking for me. I was always thinking about they're
23 getting bigger. And they did come and see me when
24 they were just little babies and my first born, she
25 was my everything.

26 PRESIDING COMMISSIONER ENG: Um-hum.

27 INMATE LOSNO: And -- but I would stop and

1 put myself in her shoes, to hold a grudge against me
2 for leaving, you know, what I mean, with two little
3 babies, her being 17 years old, also. And we spoke
4 and she had a lot of anger towards me.

5 PRESIDING COMMISSIONER ENG: Well, you
6 stayed together for just a couple years and I see that
7 you did get married after -- now, when was it. What
8 time did you start?

9 INMATE LOSNO: I met her --

10 PRESIDING COMMISSIONER ENG: You started
11 your term at the -- okay. You came in here in
12 September of '83 so you were -- you did get married
13 before you came into CDC.

14 INMATE LOSNO: Oh, yes ma'am. All -- the
15 case happened in '81.

16 PRESIDING COMMISSIONER ENG: Right.

17 INMATE LOSNO: And --

18 PRESIDING COMMISSIONER ENG: So then you had
19 to go through -- you went through a trial?

20 INMATE LOSNO: No.

21 PRESIDING COMMISSIONER ENG: Or you pled it
22 out?

23 INMATE LOSNO: Yes.

24 PRESIDING COMMISSIONER ENG: Okay. So Maria
25 stayed with you but then -- so she was -- she would
26 bring the babies to the institution to see you or no,
27 she never did?

1 INMATE LOSNO: My family did.

2 PRESIDING COMMISSIONER ENG: Okay.

3 INMATE LOSNO: My family did and we were
4 already distancing (indiscernible).

5 PRESIDING COMMISSIONER ENG: Um-hum.

6 INMATE LOSNO: And it eventually went that
7 way. I can see the --

8 PRESIDING COMMISSIONER ENG: When did you
9 talk to your daughters?

10 INMATE LOSNO: I saw my daughter yesterday.

11 PRESIDING COMMISSIONER ENG: No, I want to
12 know when you talked to your daughters about your life
13 crime.

14 INMATE LOSNO: Oh.

15 PRESIDING COMMISSIONER ENG: When were --
16 how old were they when you first broached the subject
17 with them?

18 INMATE LOSNO: I didn't see my daughter
19 until (indiscernible) was 17 years old. And I would
20 write her and send her gifts and they would receive it
21 but they were just little babies then.

22 PRESIDING COMMISSIONER ENG: Okay.

23 INMATE LOSNO: Maria's mother was the one
24 that she would act as a middleman so I could speak to
25 my daughters.

26 PRESIDING COMMISSIONER ENG: Um-hum.

27 INMATE LOSNO: And my mom -- my mom kept

1 close contact with them. Maria just decided not to
2 see me and she wasn't going to have any contact. That
3 was her own personal issue she was having later on.
4 She's a mother now and all her life. But my daughters
5 got to express their anger towards me when I was at --
6 we really sat down and spoke about it real good in
7 Soledad before coming here. And over the phone, I
8 remember my daughter couldn't even breathe because she
9 was afraid to hear my voice over the phone until we
10 spoke and I told her what happened that day. I told
11 her, you know, I was stupid. I told her about her mom
12 because she would say my mom for a long, long time and
13 she would talk real bad about me. And I would tell my
14 daughter, why, you know? She would tell me, "What do
15 you think?" And I explained to her (indiscernible)
16 and having life be miserable, having to fend for both
17 my daughters, her being a baby herself at 17. And my
18 daughters, they just wanted to -- their impression
19 was, "Did you ever love my mom?" I said, "Yes." To
20 this day, I tell them, I say, "I love your mother. I
21 love your mom." My family is always there to help her
22 out should there be something that they want help, or
23 my dad. That's what really happened in San Lorenzo.
24 My dad bought this nice house and eventually it was
25 for me. And I just wanted to take care of my
26 granddaughters and I want to provide for them and send
27 them to school and bought pianos and all this other

1 stuff.

2 PRESIDING COMMISSIONER ENG: Do you think
3 they're afraid of you?

4 INMATE LOSNO: My daughters?

5 PRESIDING COMMISSIONER ENG: Yeah.

6 INMATE LOSNO: Now?

7 PRESIDING COMMISSIONER ENG: Yeah.

8 INMATE LOSNO: Oh, no. My daughters, they
9 come here. They -- my daughter (indiscernible), she
10 voices her -- I'm the one that just stays quiet and
11 listens to what she says. She's a mother now too, to
12 a little grandson, who's four. And my other daughter,
13 too. They're rough around the edges. Not because
14 they're bad girls but because I haven't been there.
15 And I mean they have their houses and have gone on
16 with their life. But she was here yesterday and she
17 sent (indiscernible) with my grandkids. But my
18 younger daughter does hold a little bit of a grudge
19 the same way. In their lingo, their player, hey, they
20 don't let you out; they hate you. Haley
21 (indiscernible), she understands. I just tell her
22 it's something that -- I committed a crime and I've
23 been sentenced to this time. And my daughter just --
24 she doesn't understand but it hurts her. That's what
25 we go through every other two weeks, every ten days
26 when she brings my grandkids up here. I try to guide
27 her as much as I can. She asks for my opinions and I

1 tell her, I can't tell you what to do. I'm your
2 father and -- but I haven't been there so I can't
3 order you, I can't tell you. I can just give you my
4 advice.

5 PRESIDING COMMISSIONER ENG: Do you ever
6 talk to the them about the 15 year old young man whose
7 life was taken?

8 INMATE LOSNO: Yes, I do. Because she asked
9 me, is it true (indiscernible)? And exactly what I
10 said earlier. I say, yeah, that day when that
11 happened, you know. The sad part is my ex-wife's --
12 Maria's brother has been through the system and he
13 went through the reception center right here when I
14 worked in the hospital. I saw him and I got to speak
15 to him. I didn't even know it was him. They have --
16 Maria has another sister named Anna and Joe, little
17 Joe. Working as a (indiscernible) here I saw him and
18 I heard the last name, Santiago and I just happened to
19 see him. It can't be. So I yelled, "Little." And he
20 turned around. He's a man now. It's been 25 years.
21 He runs up to me and he started crying. He goes,
22 "Bro, you've always been my brother." And I asked
23 about him and they sent me pictures but I didn't want
24 to look at Maria because I know where I'm going to go.
25 "How's your mom? How's your" -- your grandfather was
26 Phillipino. He died and their family was always sweet
27 to me. And then finally I took a glance at Maria and,

1 "Look at my sister." I looked at her and she told me
2 -- he told me how it really effected her and she
3 walked to the crime scene and taken to the 7-11. The
4 detective would take her over there and she would tell
5 him -- she would tell him what happened that day and
6 she was shocked. So I finally got a chance to speak
7 to him and, you know, she's just asking when you're
8 coming back. My daughters need me.

9 PRESIDING COMMISSIONER ENG: What do you see
10 when I saw the name Jorge Ruiz?

11 INMATE LOSNO: I see his mom. I cannot
12 imagine the pain that he went through. I can imagine
13 because I remember when I hit him. His voice was
14 saying, "All right. All right." I remember that
15 very, very clearly. I see anguish, I see pain.

16 PRESIDING COMMISSIONER ENG: But you hit him
17 again?

18 INMATE LOSNO: No, I walked away. He said,
19 "All right." I remember it. I remember his face. I
20 remember. I can -- I see him. I learned a humbling
21 experience when I myself became a victim in prison,
22 you know. And I -- you know, when I turned my life
23 over to the Lord, there was a moment there when I had
24 a hunger. I had to bow down and dig something out of
25 a toilet to eat. I had nothing to eat. And I
26 remembering following -- how I read my Bible and it
27 says how God sees everything (indiscernible). I

1 thought I was a seeker (indiscernible) until I saw a
2 reflection in the toilet looking back at me and it was
3 me. So when I asked the Lord, I asked him
4 (indiscernible). And I stopped and I thought about
5 all of this; his mom, because I remember like I was
6 explaining to you how she hit me. I can remember him.
7 And I asked for how can I (indiscernible). I cannot
8 speak for Jorge -- for Richard because he was actually
9 killed here, murdered here in this prison many years
10 ago. But yes, I think about it. I think about it and
11 that's why I dedicate my life to what I do with kids
12 now. Every Friday, all right, I've done it in other
13 prisons. I work with programs, starting programs up
14 to this very day. As a matter of fact, last Friday.
15 I see them, I take heed to everything and I see his
16 face.

17 **PRESIDING COMMISSIONER ENG:** Commissioner
18 Star, do you want to -- I'm going to pass this over to
19 her and she's going to review your post-conviction
20 factors with you.

21 **DEPUTY COMMISSIONER STAR:** Okay. Mr. Losno,
22 I'm going to be focusing on your behavior and your
23 programming since your last hearing. And the record
24 reflects your subsequent number six hearing was in
25 December 2, 2004. Now, you were scheduled for your
26 subsequent number seven hearing in March but that was
27 postponed because of the psyche eval hadn't been done.

1 And you were rescheduled again in June of '06 but that
2 was postponed because the attorney wasn't available.
3 So I'll be focusing on activities since December of
4 '04. You're currently -- your classification score is
5 19, which is of course the mandatory minimum score for
6 lifers and your custody level is medium-A.
7 Disciplinary record shows no 115's since the last
8 hearing. In fact, you have been disciplinary free
9 since 1988. You've had a total of seven 115's but
10 they were primarily in the beginning of your life
11 term, from 1984 to 1988. I took note that they're all
12 Division F offenses and mostly had to do with -- yeah,
13 mostly late for work, delaying count, work stoppage.
14 I saw one threatening staff in '85. You've had though
15 a lot of 128-A's. In fact, the record -- your
16 counseling -- I'm referring to your Counselor's Report
17 prepared for today's hearing -- hearing. That was
18 Correctional Counselor I B. Ebert, E-B-E-R-T. And I
19 counted 32 128's between 1983 and 2001. Would that be
20 correct? I don't know if these are duplicate but you
21 got a copy of this report. Did you see all that?

22 INMATE LOSNO: Yes. From 2001?

23 DEPUTY COMMISSIONER STAR: Um-hum.

24 INMATE LOSNO: That 128 was at Soledad.

25 DEPUTY COMMISSIONER STAR: Um-hum.

26 INMATE LOSNO: And that 128 had to do with
27 they were having some ongoing disturbances on the

1 mainline, on that yard.

2 DEPUTY COMMISSIONER STAR: Um-hum.

3 INMATE LOSNO: The staff wanted to interview
4 the mainline.

5 DEPUTY COMMISSIONER STAR: Um-hum.

6 INMATE LOSNO: When the -- when they started
7 to interview the inmates in the building, I remember
8 opening my door. I'm ready to step out and I notice
9 that no one's stepping out. So I looked to my left,
10 to my right and I look across from me. Soledad is
11 built different from here. I see these guys telling
12 me don't go. I'm like, let's go down the stairs and
13 come back up. So the thing was, do I walk down the
14 stairs and face it the next day or do what everyone
15 else is doing?

16 DEPUTY COMMISSIONER STAR: So you went back
17 in?

18 INMATE LOSNO: I went back in. So a couple
19 days later, they came back again and I go and I
20 interview.

21 DEPUTY COMMISSIONER STAR: Um-hum.

22 INMATE LOSNO: They gave me this 128. It
23 was a mistake by them.

24 DEPUTY COMMISSIONER STAR: Okay. Your
25 counselor says that there's a 128-B in your file,
26 dated September 30, authored by Lieutenant Crittendon
27 in here. I guess stating that Correctional Counselor

1 III Ms. Selvage, S-E-L-V-A-G-E, stated she recalled
2 the incident and knew that Inmate Losno did
3 participate in an interview.

4 INMATE LOSNO: I did go interview.

5 DEPUTY COMMISSIONER STAR: Okay.

6 INMATE LOSNO: And that --

7 DEPUTY COMMISSIONER STAR: So without that
8 one, what you're really saying then is you've been --
9 you haven't had any 128's since -- when's the last
10 one? That would make it '92?

11 INMATE LOSNO: Yes.

12 DEPUTY COMMISSIONER STAR: Okay. I have a
13 question though, you know, and that has to do -- you
14 know, this is a lot when you were initially received.
15 What do you attribute that to?

16 INMATE LOSNO: Well, when I first came into
17 the system, a lot of it was for school, for not going
18 to school or getting there late, as well.

19 DEPUTY COMMISSIONER STAR: Um-hum.

20 INMATE LOSNO: I'm getting A's, I'm getting
21 B's. I had no excuse. I was 21, 22. A lot of the
22 guys were the same age and sometimes I wouldn't go. A
23 lot of them was for school, so I would get there late.
24 Sometimes I wouldn't go. And at that time, my way of
25 thinking was well, I'm getting A's and B's. I can
26 play hooky. And I'm running around the yard and
27 lifting weights and doing all of that, until they

1 would give me the 128's. And my thing was always
2 well, you have to give me a verbal and all that. I
3 didn't really look at them as really important factors
4 back then.

5 DEPUTY COMMISSIONER STAR: Okay.

6 INMATE LOSNO: Until my teacher asked me
7 (indiscernible) like that and that was it.

8 DEPUTY COMMISSIONER STAR: So something
9 happened in 1990 that you think turned you around,
10 this I'd better take this more serious? Or you think
11 you just matured or what do you think?

12 INMATE LOSNO: Well, I was growing up. And
13 when I -- first, being in prison is no fun.

14 DEPUTY COMMISSIONER STAR: Um-hum.

15 INMATE LOSNO: And there was times when the
16 guys we hung around were the same age and I started
17 having fun. Like playing ball and just not taking
18 care of my responsibilities, until I started seeing
19 how serious and how dangerous prison really is. Until
20 I started noticing stabbings and murders and I said
21 wait a minute. And there it was. You got to grow up
22 right away. And just seeing my family coming up every
23 weekend and hearing constantly from my family about
24 that time. I'm like no, I knew it was time to cowboy
25 up.

26 DEPUTY COMMISSIONER STAR: Okay. All right.
27 Let's move onto your vocational. Did -- you completed

1 a vocational dry cleaning --

2 INMATE LOSNO: Yes, ma'am.

3 DEPUTY COMMISSIONER STAR: -- courses in
4 2004. Does that sound correct?

5 INMATE LOSNO: Yes, ma'am.

6 DEPUTY COMMISSIONER STAR: Were you here,
7 sir, or where were you?

8 INMATE LOSNO: Yes, here at San Quentin.

9 DEPUTY COMMISSIONER STAR: You were here?
10 Okay. And you're currently participating in the
11 vocational plumbing. How far along are you?

12 INMATE LOSNO: Yes, ma'am. I need two more
13 books and I'm done with that trade.

14 DEPUTY COMMISSIONER STAR: Okay.

15 INMATE LOSNO: I'm doing it -- since the
16 last time I appeared and it was postponed.

17 DEPUTY COMMISSIONER STAR: Uh-huh.

18 INMATE LOSNO: I just -- you know, I'm going
19 to take another one and see what I can learn. I'm
20 learning because my brothers, they're all grown up
21 now.

22 DEPUTY COMMISSIONER STAR: Uh-huh.

23 INMATE LOSNO: They live by the church. And
24 when they come to see me, he says hey, being a deacon
25 is a lot of responsibility. So he's wiring, plumbing.
26 My dad's got a pool and I said, you know what? I'm
27 going to see whether I can pick up some of the

1 plumbing trade here --

2 DEPUTY COMMISSIONER STAR: Okay.

3 INMATE LOSNO: -- so I can know what to do
4 when they say hey, let's go do this. Then I at least
5 know something. I'm not ignorant to what I've got to
6 help them with.

7 DEPUTY COMMISSIONER STAR: So are you doing
8 this full time or --

9 INMATE LOSNO: Yeah, full-time.

10 DEPUTY COMMISSIONER STAR: Okay. And I do
11 take note that the Board did receive your November 28,
12 2006 Certificate for having completed the Level I
13 book, as well as a June Certificate for completing the
14 core curriculum plumbing book. And --

15 INMATE LOSNO: It goes hand and hand in some
16 of the construction jobs (indiscernible). The reason
17 why they (indiscernible) be ignorant to.

18 DEPUTY COMMISSIONER STAR: Okay.

19 INMATE LOSNO: I just know you've got to
20 know something.

21 DEPUTY COMMISSIONER STAR: Okay. I didn't
22 see any recent, though, evaluations. Work
23 evaluations. Did the teachers write any evaluations
24 on you, other than --

25 INMATE LOSNO: Yeah. I turned in --

26 DEPUTY COMMISSIONER STAR: Is that this
27 chrono?

1 INMATE LOSNO: The letter, yeah.

2 DEPUTY COMMISSIONER STAR: Okay. All right.

3 INMATE LOSNO: And I have a letter from my
4 instructor.

5 DEPUTY COMMISSIONER STAR: Okay. Okay,
6 we'll get into that then. All right. And
7 educationally -- of course when you came to prison you
8 were a 12th grade dropout. You got your GED, though,
9 in 2000; correct?

10 INMATE LOSNO: Yes, ma'am.

11 DEPUTY COMMISSIONER STAR: Okay. And I see
12 that you've been attending college programs. In fact,
13 the counselor lists a number of your courses that
14 you've been taking. Is that through the -- is that
15 called the Patton College Program?

16 INMATE LOSNO: Yes, ma'am.

17 DEPUTY COMMISSIONER STAR: Okay. And this
18 year, I counted -- since your last hearing I've
19 counted at least six courses that you've taken so
20 that's great.

21 INMATE LOSNO: I just finished one last
22 week.

23 DEPUTY COMMISSIONER STAR: What was that in?

24 INMATE LOSNO: A few more classes I get my
25 AA. I should be done in about --

26 DEPUTY COMMISSIONER STAR: Three more to
27 your AA? All right. Very good, sir. All right. And

1 let's talk about your participation in self-help
2 groups since your last hearing. And I did receive
3 certificates. You've got several certificates from
4 the Impact Program, a certificate from the Real
5 Choices Program and a certificate from the Marin's
6 Womens Services Mankind Men's Program, which you
7 participate in for five months. Is that correct?

8 INMATE LOSNO: Yes, ma'am.

9 DEPUTY COMMISSIONER STAR: Okay. Lark
10 Program.

11 INMATE LOSNO: Yes, ma'am.

12 DEPUTY COMMISSIONER STAR: Trust.

13 INMATE LOSNO: Yes, ma'am.

14 DEPUTY COMMISSIONER STAR: And an anger
15 management course and Overcomer's Outreach.

16 INMATE LOSNO: Yes, ma'am.

17 DEPUTY COMMISSIONER STAR: Now, I'd like to
18 ask you to tell me, that's got a NA type foundation?

19 INMATE LOSNO: AA and NA.

20 DEPUTY COMMISSIONER STAR: A 12-step kind of
21 foundation to it?

22 INMATE LOSNO: The same thing.

23 DEPUTY COMMISSIONER STAR: Yeah. How long
24 have you been participating in that?

25 INMATE LOSNO: Since I got here and I've
26 been here going on five years, February. I also
27 participated in AA in Pelican Bay. I facilitate the

1 group now.

2 DEPUTY COMMISSIONER STAR: Okay.

3 INMATE LOSNO: It goes hand in hand with the
4 Christian (indiscernible).

5 DEPUTY COMMISSIONER STAR: Okay. Have you
6 been consistently participating? No breaks?

7 INMATE LOSNO: Every Thursday.

8 DEPUTY COMMISSIONER STAR: Okay.

9 INMATE LOSNO: I go because I like sharing
10 with the outside sponsors.

11 DEPUTY COMMISSIONER STAR: Um-hum.

12 INMATE LOSNO: A lot of them have to be all
13 the program with the (indiscernible). They do the
14 spiritual thing and that's -- it's great. They're
15 beautiful people. So it's not -- when we have our
16 regular meetings, we share. They fly from Arizona.
17 We have family time, you could say. It's not family
18 but it's family anyway. It's a beautiful thing.

19 DEPUTY COMMISSIONER STAR: Okay. That's
20 every Thursday you do that?

21 INMATE LOSNO: Every Thursday.

22 DEPUTY COMMISSIONER STAR: All right. Any
23 other -- because I'm just highlighting the major ones
24 you've participated in since your last hearing, sir.
25 Any others that I may have missed here that you'd like
26 to tell me about?

27 INMATE LOSNO: We just started another group

1 called The Practice.

2 DEPUTY COMMISSIONER STAR: Um-hum. What's
3 that about?

4 INMATE LOSNO: That's about performing a day
5 of National Peace here in San Quentin, going hand in
6 hand with the outside community in San Francisco in
7 the Mission District. That's where I continue to give
8 back. My daughters live in the area so they tell me
9 about the area. I know what's happening in the area.

10 DEPUTY COMMISSIONER STAR: Um-hum.

11 INMATE LOSNO: And these kids that come in
12 here every Friday, I know what's happening out there.
13 These kids are not like -- this crime that I
14 committed, this crime I'm here for now.

15 DEPUTY COMMISSIONER STAR: Um-hum.

16 INMATE LOSNO: When I think about back then
17 and how it is now, it's ten times -- no 20 times
18 worse. So there was a big old movement in the Mission
19 District. They had a minute of silence to stop the
20 violence so we picked up that philosophy and we
21 brought it here. So we meet every Thursday before I
22 go to my Overcomer's.

23 DEPUTY COMMISSIONER STAR: Um-hum.

24 INMATE LOSNO: With the approval of the
25 Associate Warden here. And our idea is to have a --
26 well, we have it on board already with the media so we
27 can let the outside community know how we have to stop

1 the violence in here so these youngsters can emulate
2 what we do in here. So they can stop what they're
3 doing out there.

4 DEPUTY COMMISSIONER STAR: So people come in
5 from the out -- who's coming in from the outside?

6 INMATE LOSNO: Yeah. Radio stations.

7 DEPUTY COMMISSIONER STAR: Okay.

8 INMATE LOSNO: Maybe Channel 7, KGO.

9 DEPUTY COMMISSIONER STAR: Okay.

10 INMATE LOSNO: We're getting big, strong
11 support of the outside community and it's to go hand
12 in hand with what's happening out there. Because in
13 February, what really kicked this idea, in February
14 there was a riot here between the African American
15 community and the Hispanic community and that kind of
16 spilled over into the streets. So we did -- we take
17 that concept and we were trying to do something so
18 they could emulate the opposite of that. So it's
19 called National Day of Peace. It didn't happen
20 (indiscernible). It's scheduled for April 28 of this
21 coming year. That's our date right now so we're
22 trying to get that one to the outside.

23 DEPUTY COMMISSIONER STAR: Okay. Any other
24 programming you've done recently you want to share
25 with the Board?

26 INMATE LOSNO: My Choices, My Choices
27 Program. I'm also a steering committee member. The

1 Lark, which I'm also a facilitator.

2 DEPUTY COMMISSIONER STAR: Okay. We
3 mentioned that.

4 INMATE LOSNO: Anything else is just media;
5 radio, TV.

6 DEPUTY COMMISSIONER STAR: All right. Let's
7 move onto your Psychiatric Evaluation. The last one
8 was prepared on May 22 of 2006 by Dr. Michele Inaba,
9 spelled I-N-A-B-A. And focusing first on the -- any
10 psychiatric diagnosis, Dr. Inaba says Axis I is, there
11 is no diagnosis. And the only thing she indicates is
12 that there was adolescent antisocial behavior by
13 history. No diagnosis on Axis II. No issues on Axis
14 III. GAF score is 78. The prior Psyche Evaluation
15 was by Dr. Godyne, G-O-D-Y-N-E, back in '04 and that
16 said a moderate risk to safety so another Psyche
17 Evaluation was ordered. And I'm reviewing the summary
18 of Dr. Inaba's report. Actually, before I get to the
19 summary, there's a couple of issues that Dr. Inaba
20 addressed that I'd like to ask you about, sir. And
21 one is that you indicated to Dr. Inaba that you came
22 from some physical fighting between your parents. A
23 family with some physical fighting between parents and
24 that you yourself acknowledge you may have been
25 jealous and possessive of your, I assume first wife
26 and you admitted striking her. Is that correct?

27 INMATE LOSNO: Yes, ma'am.

1 DEPUTY COMMISSIONER STAR: Okay. And the
2 doctor in -- when it gets to the summary indicates a
3 little concern for that because feels you should be
4 participating in some type of counseling regarding
5 relationships. Do you feel you have an issue there?

6 INMATE LOSNO: I don't have an issue. When
7 I struck Maria, it was more like a push. It was more
8 of pulling each other's hair. We were teenagers. But
9 as far as counseling, I would love that. I mean, you
10 know, I got married not knowing what the definition
11 was all about, being a youngster. I had kids, not
12 knowing what it is to be a responsible father or
13 husband because I had no experience in any of that.
14 And to be quite frank, I had no experience as far as a
15 long-term social relationship with I could say a wife
16 or a girlfriend.

17 DEPUTY COMMISSIONER STAR: Um-hum.

18 INMATE LOSNO: It was three.

19 DEPUTY COMMISSIONER STAR: Um-hum.

20 INMATE LOSNO: But I'd love to learn more,
21 you know. I had -- I was engaged about a year and a
22 half ago and that was beautiful and I was learning
23 through that. It's not so much -- I mean, I'm 44. I
24 have no experience as far as going out there and
25 having many different relationships so I know what to
26 expect and how to deal with certain things.

27 DEPUTY COMMISSIONER STAR: Um-hum.

1 **INMATE LOSNO:** So with Erma, it was a
2 beautiful experience. My daughters, that's what --
3 that -- I remember that question she asked with regard
4 to Maria and my daughters. And my daughters didn't
5 want that relationship to happen and the reason why is
6 because they wanted the attention.

7 **DEPUTY COMMISSIONER STAR:** Um-hum.

8 **INMATE LOSNO:** And I believe they deserved
9 it. But yes, I would.

10 **DEPUTY COMMISSIONER STAR:** Is that
11 relationship still intact? I missed that.

12 **INMATE LOSNO:** No. It's --

13 **DEPUTY COMMISSIONER STAR:** You're no
14 longer --

15 **INMATE LOSNO:** Her daughter was jealous of
16 her coming up every weekend.

17 **DEPUTY COMMISSIONER STAR:** Oh.

18 **INMATE LOSNO:** And my daughters were
19 jealous. What happened was, my daughter, the oldest
20 one, she came into the visiting room and sees me with
21 Erma Gonzalez is her name. And she knew about her
22 already but just her -- the sight that I'm with some
23 other woman made her get really upset. And I remember
24 even staff told -- because they know me very well
25 here. They said that's your dad. That's his
26 girlfriend. And she didn't want that to happen so
27 just to avoid any further, you know, feeling

1 uncomfortable, we decided to remain good friends. She
2 lives in San Mateo also and I decided to -- it would
3 be best that way. So -- but I love the -- to go and
4 learn more about that. A relationship is more than
5 just physical. I know that. I want that.

6 **DEPUTY COMMISSIONER STAR:** Okay. Let's --
7 referring now to the doctor's summary of your risk;
8 I'm referring and going to read from page five of the
9 doctor's report, second paragraph on the bottom.

10 "The present examiner also agrees with
11 Dr." --

12 [TAPE 2 SIDE 1]

13 **DEPUTY COMMISSIONER STAR:** Tape two of two,
14 side A, for Rafael Losno, C Number 73252. And we're
15 back on record. Okay, reading the psyche's concluding
16 paragraph or summarizing paragraph, it says that:

17 "The present examiner agrees with
18 Dr. Godyne's conclusion that, given his
19 crime and his institutional record,
20 Mr. Losno would be at low risk for violent
21 recidivism, compared to the members of the
22 inmate parolee population. Comparing
23 Mr. Losno's risk of future violent behavior
24 to members of society, who have no history
25 of substance abuse, violence or
26 incarceration, however, may be like
27 comparing apples to oranges. Based on his

1 exposure to violence in prison, Mr. Losno
2 would be expected to be both better able to
3 formulate a violent response if needed and
4 also more skilled at avoiding violence than
5 individuals with less exposure. Mr. Losno's
6 institutional record would suggest that he
7 is highly adept at avoiding violence in
8 almost any institution. Any situation,
9 rather. This would suggest that with the
10 maintenance of abstinence and enunciation of
11 gang affiliation, he would be at low risk
12 for violent recidivism in the community."

13 So I notice, Mr. Losno, the -- in the older psyche
14 reports that -- the issue of gang affiliation. Tell
15 the Board, when did you stop or seeing yourself as
16 affiliated with any gang in prison?

17 INMATE LOSNO: Well, affiliated? I've never
18 been part of any prison gang.

19 DEPUTY COMMISSIONER STAR: Um-hum.

20 INMATE LOSNO: My affiliation with the
21 prison gang is that's all there was on the mainline.
22 The general population while at Pelican Bay and other
23 prisons. And the peer pressure of gang participation
24 is great. As far as committing crimes for them or
25 doing what they want to order people to do, I never
26 did do any of that or been part of any of that.

27 DEPUTY COMMISSIONER STAR: Okay.

1 INMATE LOSNO: What I would see and what I
2 saw eventually I became (indiscernible) was
3 (indiscernible). I'm not going to do any of this.
4 You would see what happened to other guys; stabbed,
5 sliced. I'd go with the program in order to -- if
6 they'd say go out to the yard at a certain time, I'd
7 go out to the yard at a certain time. If we've got to
8 stay out to a certain time, I'd stay out until a
9 certain time. There come a point after doing some
10 long thinking, saying I'm going to stop programming.
11 I'm not going to have anyone tell me what to do, as
12 far as especially them. I distanced myself away from
13 that a long time ago. Eventually, I ended up getting
14 stabbed, too and sliced (indiscernible).

15 DEPUTY COMMISSIONER STAR: What year was
16 that?

17 INMATE LOSNO: This was in 1998. It was
18 '98.

19 DEPUTY COMMISSIONER STAR: I saw a statement
20 that referred to you handling the mail for the gang?

21 INMATE LOSNO: Oh, yeah. I'd go with the
22 flow. They'd say hold this. I'd hold it. What they
23 call institutional kite.

24 DEPUTY COMMISSIONER STAR: Um-hum.

25 INMATE LOSNO: I'd hold that and then
26 (indiscernible). As far as a knife here, take this
27 knife there and do that, I --

1 DEPUTY COMMISSIONER STAR: You didn't have
2 anything to do with that?

3 INMATE LOSNO: No. And usually, I'm not
4 going to say I intimidated. I'm pretty good size.
5 It's mostly they would give me so-called respect
6 because I'd been down a long time. And in prison you
7 don't see nothing, you don't hear nothing, don't want
8 to know nothing. My thing was I don't want to know
9 nothing (indiscernible). That's all. I mean, you
10 have to program, your philosophy of programming on the
11 mainline, that's all there is. If it's not
12 destruction in there and all these other -- all these
13 different (indiscernible).

14 DEPUTY COMMISSIONER STAR: So up to 1998,
15 did they sort of see you as going with the flow but in
16 '98, they asked you to do something?

17 INMATE LOSNO: No. Since all these years --

18 DEPUTY COMMISSIONER STAR: Um-hum.

19 INMATE LOSNO: -- being incarcerated,
20 they've all looked at me as "a homeboy."

21 DEPUTY COMMISSIONER STAR: Um-hum.

22 INMATE LOSNO: I was never asked to do
23 certain things. Earlier, you get involved because you
24 want to. I never got involved in any of that. In
25 1998 after I was released from the chute (phonetic) --

26 DEPUTY COMMISSIONER STAR: Um-hum.

27 INMATE LOSNO: -- I said look, I've been

1 clean. Leave me alone. There was a big riot up there
2 in Pelican Bay with north and south; Northern
3 California, Southern California. And now, that's the
4 first time even in these 20 some years they come and
5 asked me, we want you to go ahead and stab this guy.
6 And I'm like no. I'm getting on the bus. I'm working
7 with the kids. We started the Rock Program up there.
8 I got respect from all these gangs from taking -- from
9 asking permission. And they wasn't just the northern
10 gangs. A lot of gangs gave me that, their respect as
11 far as they trust me. And before we got to clear that
12 -- start that program, I had to go and attend
13 (indiscernible). I'm the co-chairman of that group.
14 I had to go and ask these people. There were going to
15 be kids. They respected enough to say all right,
16 bring kids in. And so I had that type of respect from
17 people. I said look, I'm going to do this. Don't --
18 we're in charge of these kids. Okay, it's all good.
19 In '98, there was a lock down and I remember, I was
20 taking a shower. They said look, we want you to do
21 this. I said look -- I'm the only one that has
22 access. I was down as a other because I'm not
23 Mexican. (indiscernible). I'm getting on the bus and
24 we had a whole argument and I said, if anything, if
25 you respect me, you won't ask me to do this. I'm
26 getting on the bus. If you so-called love me, then
27 get on the bus. I want out of here. Okay, that's

1 cool. We're good. I didn't do it. I said no. I'm
2 already showering and before you know it I just -- I
3 -- you know, my eyes are full of soap. I've got
4 shampoo and I'm like, I felt something and I'm trying
5 to see what it is. Then I feel another one come
6 across my face and another on my head and these are
7 the guys who I was like -- you know. I've been quiet
8 all these years. I've never gone against you guys.
9 What can I do? There's five of them. I'm by myself,
10 you know what I mean. I'm not a violent guy. I
11 looked at it and I was more shocked then anything.
12 And I see -- I couldn't really see and I'm naked and
13 bleeding. I said, that's how you pay me back,
14 homeboys? And ever since then I've always -- I always
15 say I've got the Heisman Trophy pose. I was like,
16 stay away from me, you know. I continue to do my
17 programming to this day. It's peer pressure in here
18 every day. They know where I've been. The only thing
19 they say is oh, yeah, he's been down a long time. I
20 still continue working with kids. I do what I do.
21 I've been chastised and blackballed and all these
22 situations and I've been walking the walk. And it
23 says turn the other cheek. I wear it. So I've never
24 put my hands on anyone in prison. If anything, I felt
25 the blows. I said, no, that's -- I can't do that.

26 **DEPUTY COMMISSIONER STAR:** Okay. Now, I
27 tried to highlight the major programming and behavior

1 things since your last hearing but did I miss
2 anything, Mr. Losno, that I -- you want to tell the
3 Board in terms of what's happened? What you've been
4 doing in the institution since your last hearing?

5 **INMATE LOSNO:** Oh, I was selected to appear
6 on CNN, on Larry King Live show.

7 **DEPUTY COMMISSIONER STAR:** Uh-huh.

8 **INMATE LOSNO:** That came as a shock.

9 **DEPUTY COMMISSIONER STAR:** What was it for?
10 Tell me what the --

11 **INMATE LOSNO:** It was convicted felons could
12 be transformed and my redemption.

13 **DEPUTY COMMISSIONER STAR:** Okay.

14 **INMATE LOSNO:** It was a two part series. I
15 was chosen by a lieutenant, Mr. Vernell Crittendon.

16 **DEPUTY COMMISSIONER STAR:** Uh-huh.

17 **INMATE LOSNO:** He's a beautiful person. I
18 asked him, why me, you know? He said well, you've
19 done your homework and you did a radio interview with
20 a Christian radio station a while back. He said,
21 people were calling and things went off the charts
22 with what you said. I walk my walk. We just want you
23 to share your experience of how you found the Lord and
24 what you've done and what you do. And I said well,
25 let me ask my family and all that because I was
26 really, really nervous. I know who Larry King is and
27 I'm like yeah, everyone was afraid. Yeah, that guy

1 will turn your words against you. I said well, I have
2 nothing to hide.

3 DEPUTY COMMISSIONER STAR: When did it play?
4 When did it play on TV? What was the date?

5 INMATE LOSNO: June 6.

6 DEPUTY COMMISSIONER STAR: Okay.

7 INMATE LOSNO: Yeah, June 6. I was -- I
8 remember doing --

9 DEPUTY COMMISSIONER STAR: How many were
10 selected? You and --

11 INMATE LOSNO: Oh, that was a two-day. My
12 shot was -- one, two, three, four, including two
13 (indiscernible) and two ex-inmates. The day before
14 that was another panel like that. They were all
15 chosen by Mr. Vernell. A lot of us who do all these
16 programs in prison and what we've done during our
17 incarceration. And they -- I remember they
18 interviewed me in my cell. That's the only time I've
19 ever been -- I danced in public when I was a kid in
20 parades and all that. But I couldn't believe I was
21 actually -- I was on CNN, you know. And I remember in
22 my cell and I was kind of ashamed that my family would
23 have to see me in the cell. My daughters were crying.
24 They said, that's my dad. He lives in a box. But
25 then again, they saw the reality of what -- how I've
26 been living the last 25 years. My baby brother said,
27 "Hey, man, you've got a lot of CD's." I said, "Well,

1 I like my music." But the actual taping itself, there
2 was a free moment there I said -- I was about to get
3 up and run because I was kind of nervous at that one
4 until he finally came to meet me, Mr. King. He told
5 me to relax.

6 **DEPUTY COMMISSIONER STAR:** He came here and
7 filmed or were you on the television thing?

8 **INMATE LOSNO:** Yeah, here. No, it was right
9 here.

10 **DEPUTY COMMISSIONER STAR:** Okay.

11 **ATTORNEY FOX:** In the courtyard.

12 **INMATE LOSNO:** Yeah. But before that, we
13 met in the chapel and he was very nice. And since
14 that day, I've received a lot of mail from all over
15 the place. From the United States and different parts
16 of the world, talking about how they appreciate
17 (indiscernible) the Lord because I did talk about the
18 Lord a lot and what I do with these kids on Fridays.
19 And they asked me about parole.

20 **DEPUTY COMMISSIONER STAR:** Um-hum.

21 **INMATE LOSNO:** He quoted me. He said,
22 "You're the only one there on the panel with 15 years
23 to life. You were eligible over ten years ago.
24 Surely, you must be disappointed. Some guys had
25 dates, for example. I don't know what they tell you
26 before the Board. You must be disappointed. Ten
27 years -- he said 15 to life means 25. And I just

1 remember the camera (indiscernible) and I said well, I
2 know it's a process. And he asked me what do you --
3 what does the panel tell you? I said, well, continue
4 to do your work and continue progressing and I will be
5 one of those responsible (indiscernible). And then he
6 asked (indiscernible). And I said (indiscernible)
7 I'll get out of here. And he asked me, "What do you
8 do every day?" I remember them questions. I said,
9 well -- he goes, "You must think about it." I think
10 about it every day but what can I do? Hate the world?
11 I can't do that. I'm in prison. I killed somebody.
12 I stand at my door and I think about it. And how do I
13 release my energy? I was like first I meditate and I
14 thank God for every day of life. And I wait for
15 Fridays so I can talk to the kids. And that's why I
16 try to steer them from coming in here. That's what I
17 told him. It's not word for word. I remember,
18 though. The mail has kept on coming and I continue to
19 do it every Friday when we have the kids. I really
20 enjoy the program. And now we've got a chapter out
21 there on the street and it's starting to blossom out
22 there and I want to be part of that, also
23 (indiscernible).

24 **DEPUTY COMMISSIONER STAR:** I also have -- I
25 should have read it on the chrono. I have an October
26 12, 2006 laudatory chrono from Correctional Officer
27 Evans, E-V-A-N-S, who says he's known you for almost

1 five years. That you -- particularly while you were
2 working I guess in medical supply for a couple years.
3 And that you assisted staff in that assignment. That
4 you're bilingual and you've always been on hand to be
5 an interpreter, too. And he continues to observe you
6 while he works the education security officer position
7 and has noted your determination to get your college
8 education. And he also noted that you're working
9 toward your vocational plumbing certificate. Okay.
10 I'm going to turn -- ask you to turn your attention
11 back to Commissioner Eng.

12 **INMATE LOSNO:** Yes.

13 **PRESIDING COMMISSIONER ENG:** Let's go over
14 your parole plans right now, okay? I see in this
15 large 2006 Board Report that you had used for your
16 future plans residency, you -- I believe your first
17 choice would be to reside with your father back in San
18 Lorenzo. Is that true or has that changed?

19 **INMATE LOSNO:** Well, I would love to live
20 with my dad. In previous years when I've come before
21 the Board, they've always said that I have to parole
22 back to San Mateo County because my crime was
23 committed. And that, San Mateo County, is -- all my
24 family lives there. And there's changes that my
25 sister, Gina -- they're all grown up now. She's
26 offered me a place for me to live there. My mom, my
27 sisters, my brothers, my kids. They all live in San

1 Mateo County. They've all offered me to live with
2 them. However, with my dad, the reason why is because
3 I wouldn't be so much of a burden on my brothers and
4 my sisters. The reason why I do want to go to San
5 Mateo County is for my mom. I haven't seen her in two
6 months and I know her health is -- she hasn't -- I
7 haven't seen her. And every time I call, she's
8 telling me she's good but she's usually a champion
9 every weekend. She hasn't come and I want to go there
10 to take care of her in San Mateo County, the City of
11 San Mateo and then eventually with my dad in San
12 Lorenzo. It would be a lot easier. It's a bigger
13 house. It's just -- I've got my own room there. I
14 would be away. I don't want to be a burden to the
15 rest of my brothers and sisters because they all have
16 kids, even though they've got places for me. My dad's
17 got -- he's retired. He actually's been on --
18 somebody's bringing him over to (indiscernible). His
19 health -- his -- he goes -- he has the what you call
20 it? The cancer of (indiscernible). He's getting --
21 you know, getting older.

22 **PRESIDING COMMISSIONER ENG:** But you didn't
23 like San Lorenzo.

24 **INMATE LOSNO:** But you know, back then I was
25 19 and stupid, very ignorant. I mean, I was sharp in
26 school because I went to private school.
27 (indiscernible) but now I'm a grandfather. I know

1 what's right and wrong. I -- you don't have to put
2 your hands to the fire to know you'll get burned. One
3 time is all it takes.

4 **PRESIDING COMMISSIONER ENG:** I do -- I went
5 through all these letters and I didn't see any letters
6 from your father or your mother, unless I missed
7 something. So why don't I go ahead and read into the
8 record what these are in general. And then if you
9 could, pay attention to what I'm going through and
10 then let me know where I've missed because I didn't
11 see I didn't think any residential ones. But -- so
12 the first one I have is dated December 14, 2006 from
13 Rosie Stefanatos, S-T-E-F-A-N-A-T-O-S. And who is
14 this?

15 **INMATE LOSNO:** She is Larry King's producer.

16 **PRESIDING COMMISSIONER ENG:** Oh, okay. All
17 right. So I'm taking it this is a general support
18 letter?

19 **INMATE LOSNO:** Yes. She's a very nice lady.

20 **PRESIDING COMMISSIONER ENG:** Okay. Because
21 she states:

22 "I strongly feel that he would not be a
23 threat to society but rather, an asset."

24 Okay. So that's a nice support letter. Okay. It's
25 dated from Venice, California. Then I have one from,
26 oh, Vernell, V-E-R-N-E-L-L, Crittendon,
27 C-R-I-T-T-E-N-D-O-N, Correctional Lieutenant at San

1 Quentin State Prison. Okay. This is a support letter
2 for Mr. Losno. Okay. Did I say when that was dated?
3 December 15 -- oh, wrong date -- 2007. He's a little
4 ahead of himself. We have one dated 12/1/2006. This
5 is from your daughter and I don't pronounce it the
6 same way you do. I pronounce it Angelica Losno.

7 **INMATE LOSNO:** Okay.

8 **PRESIDING COMMISSIONER ENG:** Yeah, this is
9 your oldest daughter.

10 **INMATE LOSNO:** That's her. That's my --

11 **PRESIDING COMMISSIONER ENG:** Okay. I don't
12 see any address on this but I thought I skimmed
13 through this and it's a -- unless I missed something,
14 unless you can point that out to me. But I think in
15 general, it's a support letter for your release. But
16 I don't think she states anything about providing
17 residence?

18 **INMATE LOSNO:** No. She said they arrived
19 today.

20 **PRESIDING COMMISSIONER ENG:** Pardon me?

21 **INMATE LOSNO:** She said -- my attorney said
22 they arrived today.

23 **PRESIDING COMMISSIONER ENG:** Okay. Okay.

24 **INMATE LOSNO:** But I've got a date planner
25 here somewhere with all the addresses (indiscernible).

26 **PRESIDING COMMISSIONER ENG:** But -- okay.
27 So she lives in San Francisco?

1 **INMATE LOSNO:** In South San Francisco.

2 **PRESIDING COMMISSIONER ENG:** South San

3 Francisco, okay. Then we have one dated December 12,
4 2006.

5 " My name is Robert Garcia."

6 **INMATE LOSNO:** My son-in-law.

7 **PRESIDING COMMISSIONER ENG:** Oh, okay. I
8 keep thinking isn't that name familiar, Garcia, in the
9 life crime?

10 **INMATE LOSNO:** Yeah.

11 **PRESIDING COMMISSIONER ENG:** Okay. I
12 thought oh, okay.

13 **ATTORNEY FOX:** Don't go there.

14 **PRESIDING COMMISSIONER ENG:** "On behalf of
15 my father-in-law. Okay. So is Mr. Garcia married to
16 Angelica?

17 **INMATE LOSNO:** They're waiting for me.

18 **PRESIDING COMMISSIONER ENG:** They're
19 waiting?

20 **INMATE LOSNO:** They live together. They
21 have their own place. They're waiting for me so they
22 can finally walk down the aisle.

23 **PRESIDING COMMISSIONER ENG:** Oh, so they're
24 engaged. So this is your -- okay. Okay. Is he the
25 father of her two children?

26 **INMATE LOSNO:** Yes, ma'am.

27 **PRESIDING COMMISSIONER ENG:** Okay. Okay.

1 Let's see. I have a letter but there's no date on it
2 from a Gary Christofani, C-H-R-I-S-T-O-F-A-N-I. Who
3 is this gentleman?

4 **INMATE LOSNO:** That's one of my brothers in
5 the Overcomer's and my AA.

6 **PRESIDING COMMISSIONER ENG:** This is a
7 Cairos (phonetic)?

8 **INMATE LOSNO:** Yeah.

9 **PRESIDING COMMISSIONER ENG:** Cairos Prison
10 Ministries?

11 **INMATE LOSNO:** Yes. He's also participating
12 in our 12-step program. He's a sponsor and he's been
13 in (indiscernible) I've known him. He's in San Mateo
14 County, also.

15 **PRESIDING COMMISSIONER ENG:** Has he been
16 your sponsor?

17 **INMATE LOSNO:** He's been a sponsor of the
18 group.

19 **PRESIDING COMMISSIONER ENG:** The group?
20 Okay. So this is a general support letter. Okay. We
21 have a letter from a Mr. John Kelly, K-E-L-L-Y, dated
22 November 3, 2006. He is a brown cardholder at San
23 Quentin. It says he met you in February 2004 when you
24 were a candidate on a Cairos weekend, an intensive
25 spiritual retreat, of which he was the leader. So
26 it's a nice support letter. Recommends you for
27 release. Got a letter from a Thomas Montgomery,

1 M-O-N-T-G-O-M-E-R-Y, dated November 1, 2006. This
2 gentleman met you on a spiritual retreat, also with
3 the Cairos in October 2003. This was a three-day
4 retreat, on which the two of you sat at the same table
5 and became friends.

6 **INMATE LOSNO:** That's the part that's nice.
7 A three-day retreat makes it sound like we went
8 somewhere but it's right here. It's a big -- it's a
9 Christian -- it's a beautiful movement. We look out
10 for each other and get to share a lot of our
11 testimonies. And matter of fact, we got mail from all
12 over the world for that. The three days is a life-
13 changing experience on how to get back in step. That
14 was my first time experiencing that and I had to come
15 back and get back to you guys (indiscernible) them.
16 It was a --

17 **PRESIDING COMMISSIONER ENG:** What does
18 Mr. Montgomery do?

19 **INMATE LOSNO:** Tariq (phonetic)? He's a
20 very good friend. He's also --

21 **PRESIDING COMMISSIONER ENG:** Yeah, but what
22 does he do on the outside?

23 **INMATE LOSNO:** Oh, he's also a sponsor on
24 the street.

25 **PRESIDING COMMISSIONER ENG:** Okay.
26 Neil Baker, N-E-I-L, Baker, B-A-K-E-R. No date on it.
27 Mr. Baker is a sponsor for the Overcomer's Anonymous

1 Program, a Christian 12-step program here at San
2 Quentin. Okay. Certified drug and alcohol counselor.
3 Sees that you're very involved with your group, trying
4 to improve your understanding of the part that drugs
5 and alcohol played in you being incarcerated. Okay.
6 That's general support. A letter dated 5/8/06 from
7 Dee Simone, S-I-M-O-N-E. Known you for four and a
8 half years. Is this a correctional officer?

9 **INMATE LOSNO:** Yes, ma'am.

10 **PRESIDING COMMISSIONER ENG:** It's a general
11 support of release letter. Okay.

12 **ATTORNEY FOX:** That's the letter from his
13 dad.

14 **PRESIDING COMMISSIONER ENG:** Oh. Well, this
15 is September of '05 though.

16 **ATTORNEY FOX:** That was after our last
17 hearing.

18 **PRESIDING COMMISSIONER ENG:** You don't have
19 a updated letter?

20 **INMATE LOSNO:** I remember that when they
21 postponed me and I was going to the psyche report and
22 came back again. They postponed me again after June
23 12. Sacramento did something so all the State had to
24 postpone the hearings. And that was the latest one.

25 **PRESIDING COMMISSIONER ENG:** Yeah. This is
26 dated September 14 of '05. It's over a year old so we
27 generally don't -- I've notated on the record but we

1 generally -- too many things can happen --

2 **ATTORNEY FOX:** Yeah. I under --

3 **PRESIDING COMMISSIONER ENG:** -- in a year's
4 time. So you know, we -- that's why we always ask
5 that you have the most updated. And I do know that we
6 had postponed you recently, just in the last month for
7 this date because of your attorney's availability.

8 **INMATE LOSNO:** Yeah.

9 **PRESIDING COMMISSIONER ENG:** But --

10 **ATTORNEY FOX:** There was an earlier
11 postponement, as well.

12 **PRESIDING COMMISSIONER ENG:** I believe the
13 Commissioner put that into the record. It was back in
14 March.

15 **ATTORNEY FOX:** So the letter would have been
16 timely at that point.

17 **PRESIDING COMMISSIONER ENG:** Okay.

18 **INMATE LOSNO:** My brother's -- I gave my
19 attorney a 60-day planner and they've got all the
20 information that you had just expressed.

21 **ATTORNEY FOX:** (indiscernible).

22 **PRESIDING COMMISSIONER ENG:** Okay. So then
23 I have a May 3, 2006 letter from Rick -- how do you
24 pronounce that?

25 **ATTORNEY FOX:** Villasenor, V-I-L-L-A --

26 **PRESIDING COMMISSIONER ENG:** Villasenor.

27 **INMATE LOSNO:** Yes.

1 **PRESIDING COMMISSIONER ENG:** Okay.

2 V-I-L-L-A-S-E-N-O-R. I apologize up front for my
3 pronunciation. And this gentleman is a
4 supervisor/owner of RAV Construction. So what is he
5 offering you?

6 **ATTORNEY FOX:** Permanent employment.

7 **PRESIDING COMMISSIONER ENG:** I'm trying to
8 see where that is.

9 **ATTORNEY FOX:** Second paragraph, last
10 sentence.

11 **PRESIDING COMMISSIONER ENG:** Okay.

12 "I would like to give credit to Mr. Losno
13 for his actions and I'm willing to offer
14 Mr. Losno permanent employment opportunity
15 in hopes of his release."

16 Well, okay. Participation -- what is he specifically
17 offering you, sir?

18 **INMATE LOSNO:** A job in construction,
19 remodeling. I would do some work for the
20 (indiscernible) Community Center. It comes out of San
21 Francisco and send their kids up here. And I'm
22 working for these kids and through that organization
23 because they've got this gentleman right here and he
24 knows about my programming with them. I guess they
25 want to give me a job.

26 **PRESIDING COMMISSIONER ENG:** Okay. Well,
27 this letter is rather general. It just says that they

1 would like to offer you permanent employment but he
2 doesn't state what that would be. If that's full-
3 time, part-time, at what type of salary or any other
4 information. You know, what type of position. Excuse
5 me. The Panel generally likes to see letters as
6 specific as possible because it just helps in --
7 because again, the Panel, we're just one part of the
8 whole process. So that should you be given a date, it
9 goes through a pretty detailed review. Everything has
10 to be verified. So the better information you provide
11 up front, the more detailed it is, the better; okay?
12 Because many people can write letters and then we have
13 no idea, what is he really offering you; okay? And
14 would it be at a salary that's going to allow you to
15 be -- to be able to be financially independent? The
16 same thing with the support letters for residence.
17 Let me take a quick look at this letter from your
18 father.

19 **ATTORNEY FOX:** I believe there's an offer
20 about the second or third paragraph down, the first
21 page.

22 **PRESIDING COMMISSIONER ENG:** Okay.

23 **ATTORNEY FOX:** And that in the SLO packet
24 that was sent to us.

25 **PRESIDING COMMISSIONER ENG:** It says that:
26 "I have no much faith in my son's
27 rehabilitation that I am willing to give him

1 a home to live in and assist him in
2 employment. He has his bedroom in our home,
3 which is (indiscernible) in a safe
4 (indiscernible) environment located in San
5 Lorenzo."

6 Okay. I've got another letter, December 8 of 2006,
7 signed by a Rudy Corpuz, C-O-R-P-U-Z, Jr., Executive
8 Director of United Playaz, P-L-A-Y-A-Z. I'm sorry for
9 the pronunciation.

10 **INMATE LOSNO:** You pronounced it right.

11 **PRESIDING COMMISSIONER ENG:** Oh, I did?

12 **INMATE LOSNO:** Yes.

13 **PRESIDING COMMISSIONER ENG:** Oh, okay. This
14 is a violence prevention program for youth, who are
15 involved in gangs and other high-risk activities.
16 Okay. And this gentleman states that he's come to
17 know you through your work with the Choices Program at
18 San Quentin.

19 "Committed to assisting Mr. Losno in gaining
20 employment as soon as he is released on
21 parole. Also committed to getting Mr. Losno
22 involved in the Extended Opportunity
23 Program; EOPS, to pursue and education at
24 San Francisco City College."

25 That's a nice support letter. Do you know, has he
26 stated to you anything in particular of how he would
27 help you in gaining employment?

1 **INMATE LOSNO:** Yeah. He has the -- his
2 agency is either in downtown San Francisco or
3 (indiscernible) District in San Francisco. I'd go out
4 and become a, like a counselor, talking to the young.

5 **PRESIDING COMMISSIONER ENG:** So that's the
6 employment he's talking about?

7 **INMATE LOSNO:** Yes.

8 **PRESIDING COMMISSIONER ENG:** It would be
9 specific to --

10 **INMATE LOSNO:** His organization.

11 **PRESIDING COMMISSIONER ENG:** Okay.

12 **INMATE LOSNO:** See, he brings the kids up
13 here, too, from San Francisco. So I get them from San
14 Mateo County, San Francisco, Oakland, Richmond; all
15 these neighboring counties. The majority of time
16 they're little gang banging kids. And sometimes being
17 up front with hey, the world is your oyster is not
18 what they gotta hear. So I get at them a little
19 deeper than that and that's why I make a difference.

20 **PRESIDING COMMISSIONER ENG:** That's good.
21 That's good. All right. We've got a letter here
22 dated December 13 of this year from Tony Cheng,
23 C-H-E-N-G. He's a vocational instructor for
24 vocational -- your vocational plumbing class. Let me
25 ask -- oh, okay. Well, let me get through these.
26 Then there was this letter from -- a follow-up letter
27 from Dr. Inaba, I-N-A-B-A, the psychologist, dated

1 August 1, 2006. And I believe that she just clarifies
2 I think what she met by maladaptive personality
3 traits. So it was in the Board packet, too. We've
4 got another letter from Potentials Unlimited, dated
5 December 14, 2006, signed by Daniel Archer,
6 A-R-C-H-E-R. It states that:

7 "Mr. Losno has written us and has been
8 accepted for our sober living homes." They
9 believe that you're a good candidate. "And
10 upon release, we can help this gentleman to
11 return to society and be productive and
12 responsible, living clean and sober."

13 Sir, is this a place that you would be residing in?
14 This is an alternative?

15 **ATTORNEY FOX:** It is an alternative, in the
16 event things don't work out in one of the others. And
17 also, it would be -- if there's a little transition
18 time out that's needed.

19 **PRESIDING COMMISSIONER ENG:** And that's what
20 this Potentials Unlimited, they have -- how many beds
21 do they have?

22 **ATTORNEY FOX:** I don't know that. I'm
23 sorry.

24 **PRESIDING COMMISSIONER ENG:** Okay. Do you
25 have any idea?

26 **INMATE LOSNO:** No, I don't.

27 **PRESIDING COMMISSIONER ENG:** So they -- do

1 you -- so tell me something about them. Do they
2 accept people directly from the institutions the
3 minute they -- the inmate is paroled? They can go
4 directly into the sober living homes?

5 **ATTORNEY FOX:** If it passes muster with their
6 parole agent. It takes some planning but they've
7 reviewed Mr. Losno's record and there's space
8 available now. But it's something that the parole
9 agent would have to satisfy him or herself.

10 **PRESIDING COMMISSIONER ENG:** How did you
11 find them, sir?

12 **INMATE LOSNO:** It must have been someone
13 that I met here. How old is that? How recent?

14 **PRESIDING COMMISSIONER ENG:** December 14.
15 They said that you wrote them.

16 **ATTORNEY FOX:** It was faxed.

17 **INMATE LOSNO:** It was faxed?

18 **ATTORNEY FOX:** Yeah.

19 **INMATE LOSNO:** I can't remember.

20 **PRESIDING COMMISSIONER ENG:** They said that
21 you wrote them. Okay. So you really don't know what
22 they have to offer there?

23 **INMATE LOSNO:** No, I don't. All I know is
24 that a lot of programs like this, it's very hard
25 sometimes to answer that question because being a
26 lifer, it's always indecisive. Is it yes? Is it no?
27 It's like jobs sometimes. They can be out

1 (indiscernible) for short times not knowing if the
2 Board says yes.

3 PRESIDING COMMISSIONER ENG: Okay. I think
4 I already read this one from John Kelly.

5 ATTORNEY FOX: Yes, you did.

6 PRESIDING COMMISSIONER ENG: Yes, I did.
7 Okay. Then this other one, a general support from
8 Rose Nieto, N-I-E --

9 ATTORNEY FOX: Oh, no. I'm sorry. That
10 might be for another case.

11 INMATE LOSNO: No.

12 ATTORNEY FOX: Oh, I'm sorry.

13 INMATE LOSNO: I know her, too.

14 PRESIDING COMMISSIONER ENG: Okay, go ahead.

15 PRESIDING COMMISSIONER ENG: Yeah, this -- I
16 don't --

17 ATTORNEY FOX: I'm not confused, too.

18 DEPUTY COMMISSIONER STAR: I've had the
19 confusion, Ms. Fox, but I read it.

20 PRESIDING COMMISSIONER ENG: Oh, this is
21 your relative. We're so -- yes.

22 ATTORNEY FOX: Right.

23 PRESIDING COMMISSIONER ENG: This is rose
24 Nieto and she does say that she's sending this letter
25 concerning Rafael Alberto Losno. Okay. And it is a
26 general support letter. It's not dated but we did get
27 it in the packet. I guess she resides in South San

1 Francisco. We talked about this one. Have I missed
2 any?

3 **ATTORNEY FOX:** We had some general support
4 letters from the University of California Legal
5 Guardian, a philosophy case -- or case -- class that
6 Mr. Losno was enrolled in and performed well in. And
7 also a class he successfully completed at USF. But
8 again, the dates are somewhat old. The USF one is
9 December 30 of '05 and the Berkeley one is January 12
10 of this year. Also, in our packets is another letter,
11 January 3 of '06 from Carlos Tello (phonetic) and
12 that's a general support letter. And then February
13 23, Pat Carreros (phonetic) writes a letter of
14 support. Support once he gets out and also a
15 townhouse that Mr. Losno could live in. It's in the
16 Notices section of the SLO packet.

17 **PRESIDING COMMISSIONER ENG:** There are so
18 many --

19 **ATTORNEY FOX:** I know.

20 **PRESIDING COMMISSIONER ENG:** -- letters in
21 here and they were all mixed up between 2005 and 2006
22 and they were all mixed up. But I thought that's why
23 I took your most current. Because 2005, to be honest,
24 I didn't even look at because there were so many
25 others.

26 **ATTORNEY FOX:** Oh, okay.

27 **PRESIDING COMMISSIONER ENG:** And I felt that

1 they were a little too outdated. But that's why I'm
2 asking.

3 **ATTORNEY FOX:** Right.

4 **PRESIDING COMMISSIONER ENG:** That's why your
5 attorney is stating the ones that she feels are
6 necessary to put into the record.

7 **INMATE LOSNO:** Okay.

8 **ATTORNEY FOX:** And then March 1 from one of
9 the corrections officers here, a A. Duenas,
10 D-U-E-N-A-S, which is a letter of support and shows
11 that he supports constructively other inmates in the
12 institution. And then there's a letter dated February
13 17 of this year; Mission Neighborhood Centers, which
14 offers general support. And I don't know if you have
15 those in so I apologize.

16 **PRESIDING COMMISSIONER ENG:** I don't think
17 so.

18 **ATTORNEY FOX:** I don't mean to --

19 **PRESIDING COMMISSIONER ENG:** Because I would
20 have recognized them. Yeah, okay.

21 **DEPUTY COMMISSIONER STAR:** I don't think I
22 have them, either.

23 **PRESIDING COMMISSIONER ENG:** Yeah. I did --
24 I didn't recognize those.

25 **ATTORNEY FOX:** And there is a job
26 description and I know you're saying 2005 you wouldn't
27 consider. But this is dated December 26 so it's very

1 close and it is a job offer with the salary and hours
2 per week.

3 PRESIDING COMMISSIONER ENG: I did see that,
4 as a translator?

5 ATTORNEY FOX: Yes.

6 PRESIDING COMMISSIONER ENG: Okay.

7 ATTORNEY FOX: I just wanted to be sure.

8 PRESIDING COMMISSIONER ENG: I did see that.
9 I was going to ask you about that, even though it's a
10 year old and I didn't notice any reference to this
11 particular company, even in the March Board Report. I
12 wanted to see if you were going to raise that. So
13 that's why I thought, okay, it's probably not relevant
14 any longer because it was not notated in here for
15 employment in the --

16 INMATE LOSNO: In my Counselor's Report?

17 ATTORNEY FOX: Yes. Yeah. And it's very
18 good because this one, this letter dated December 26
19 from Cal Meca, M-E-C-A, Group, unless I missed
20 something, the salary is \$10.50 per hour for 40 hours
21 per week as an office assistant. Helping with filing,
22 answering phones, et cetera. And it's signed by
23 Maria Carty, C-A-R-T-Y, Immigration Counselor. And do
24 you know who this person is?

25 INMATE LOSNO: Yeah, she's my aunt.

26 PRESIDING COMMISSIONER ENG: Oh, it's your
27 aunt. Okay.

1 just barely. It's December and this was in
2 anticipation of the February, I think, Board. This is
3 a job offer from Alvarado Tax and Accounting Services
4 for translation during business meetings, telephone
5 questions and during tax preparations. Monday through
6 Saturday in the tax season and the rest of the
7 calendar year his schedule would be Monday through
8 Friday. Starting pay last year was \$13.00 per hour, a
9 bonus at the end of the scheduled tax season month.
10 And there's a discussion of the sort of support that
11 would be available aside from just the job. Would you
12 like my copy?

13 **PRESIDING COMMISSIONER ENG:** Yeah. Sir,
14 what's your first choice?

15 **INMATE LOSNO:** You know what? I'm probably
16 -- these jobs, I owe them all services to Alvarado Tax
17 and Company for me because they've been supporting me
18 for a long time. They've waited for me. My aunt,
19 also.

20 **ATTORNEY FOX:** And before you finish
21 answering, there is another job offer from December
22 13, again of last year but again, it was just on the
23 cusp of being timely for our last hearing, which is
24 Bumblebee Construction. And he would be a laborer,
25 working at \$15.00 an hour Monday through Friday and I
26 can give you that copy, as well.

27 **PRESIDING COMMISSIONER ENG:** You know, I

1 don't recall seeing these in here.

2 ATTORNEY FOX: Well, they were in mine.

3 DEPUTY COMMISSIONER STAR: They were in the
4 -- I saw them in the packet; the construction and the
5 tax letter.

6 PRESIDING COMMISSIONER ENG: Okay. Because
7 I was specifically looking for --

8 DEPUTY COMMISSIONER STAR: Here we go.
9 Okay, everybody. Hold on while I change this tape.

10 [TAPE 2 SIDE 2]

11 DEPUTY COMMISSIONER STAR: Side B, tape two
12 for the parole hearing for Rafael Losno, C Number
13 73252 and we're back on record.

14 ATTORNEY FOX: They're not always in
15 chronological order.

16 PRESIDING COMMISSIONER ENG: Okay. All
17 right.

18 DEPUTY COMMISSIONER STAR: I'll show you
19 mine.

20 PRESIDING COMMISSIONER ENG: That's all
21 right. I finally found it. It was like mixed up in
22 all these old ones. Okay.

23 ATTORNEY FOX: Um-hum.

24 PRESIDING COMMISSIONER ENG: But again,
25 those are a little outdated so it does concern us.

26 ATTORNEY FOX: Well, in the event the Panel
27 would be willing to find Mr. Losno suitable, this is

1 something that the Parole Department hits the street
2 on almost immediately, to verify what we have said.

3 **PRESIDING COMMISSIONER ENG:** Right.

4 **ATTORNEY FOX:** Just to make sure. And in
5 the event any of it is not valid, there's no date.

6 **PRESIDING COMMISSIONER ENG:** But sir, okay.

7 One concern right off the bat is that you state that
8 you would -- we have one letter from your father, even
9 though it's outdated, and that's in San Lorenzo.
10 These jobs are all in San Mateo or (indiscernible).

11 **INMATE LOSNO:** That's in East Bay.

12 **PRESIDING COMMISSIONER ENG:** Okay. How far
13 is that to San Lorenzo?

14 **INMATE LOSNO:** Oh, a few miles. It's not
15 that far. It's right at the freeway, right by the old
16 coliseum going north.

17 **DEPUTY COMMISSIONER STAR:** Well, it's about
18 30 to 45 minutes away from San Lorenzo.

19 **PRESIDING COMMISSIONER ENG:** Okay. So how
20 would you get around?

21 **INMATE LOSNO:** If it was at my dad's?

22 **PRESIDING COMMISSIONER ENG:** Um-hum.

23 **INMATE LOSNO:** (indiscernible) San Lorenzo
24 (indiscernible) is right down five blocks from my
25 dad's, if I remember. It's still there and at the
26 plaza. My cousin lives right there (indiscernible) so
27 it's not far at all. And the reason why San Mateo

1 County, all the jobs like I had mentioned before, all
2 my family is (indiscernible). My full purpose would
3 be for my mom.

4 **PRESIDING COMMISSIONER ENG:** Okay.

5 **INMATE LOSNO:** But that would be basically
6 said there.

7 **ATTORNEY FOX:** And also, there's a letter
8 from his mother, Maria Del Castillo. Did you not see
9 that one, offering a place to live?

10 **PRESIDING COMMISSIONER ENG:** What's the
11 date?

12 **ATTORNEY FOX:** It's undated.

13 **PRESIDING COMMISSIONER ENG:** I think that's
14 why I didn't look at it.

15 **ATTORNEY FOX:** Oh, well, it says -- yeah, it
16 was March.

17 "My son now appears before you this March of
18 '06 so it would have been before."

19 I don't think there's a reason to doubt you.

20 **PRESIDING COMMISSIONER ENG:** I'm going to
21 have to go through them.

22 **ATTORNEY FOX:** I'm sorry. But it is there.

23 **PRESIDING COMMISSIONER ENG:** Okay. Sir, you
24 did a very good outline of what your plans are. In
25 terms of financial support and maybe I did read the
26 letter from your mother. I can't recall but I don't
27 recall seeing -- even scanning over anything where

1 anybody was stating that they were going to give you
2 any type of financial support. And as you already
3 know, that once an inmate gets a date and is released,
4 you're going, you know, to go through a pretty
5 significant transition. And that often, even though I
6 know -- I think you have two different job offers for
7 your translation services. One is at like \$10.00,
8 \$10.50 an hour and the other one was at \$13.00. That
9 could be difficult to survive on for a while. So the
10 Panel usually likes to know what additional financial
11 support you might have. In other words, everything as
12 detailed -- as much detail as possible that shows the
13 Panel that you have thought about all possibilities,
14 so that -- because it's difficult when somebody gets
15 out. When somebody's been incarcerated for a long
16 time, jobs are not that easy to come by, all right?
17 And things have changed an awful lot on the outside
18 and it's very, very expensive to live. So how are you
19 going to get by and be able to do all the things that
20 you have to do? And you're talking about if you're
21 over in the East Bay and traveling back over to San
22 Mateo County or into San Francisco and all the way
23 around, how are you really planning to do that
24 logically? And I understand what you say by BART but
25 to get over to San Mateo, BART doesn't go into San
26 Mateo unless you go via San Francisco and then --

27 **INMATE LOSNO:** Well, my family is out there

1 to support me with all of that but my father is the
2 one. See, that's why when I say if I had to choose,
3 it would be with my dad because my dad -- there's a
4 reason why he lives how he lives, you know. And --

5 **PRESIDING COMMISSIONER ENG:** How old is he?

6 **INMATE LOSNO:** My dad is 73.

7 **PRESIDING COMMISSIONER ENG:** Is he still
8 driving or does he have health problems?

9 **INMATE LOSNO:** He drives. He doesn't like
10 driving long distances but he drives. He comes up
11 every two weeks. But he's the reason why, because the
12 house is a big house. I have my own room there. I
13 left that when I was living out there. He's well off.
14 And my brothers, they work (indiscernible). My
15 sisters and one of them even offered me a car but I
16 can't drive without first reading the book. So I
17 know. I know that it's hard.

18 **PRESIDING COMMISSIONER ENG:** That's true.

19 **INMATE LOSNO:** I know it's a hard transition
20 but I'm a fighter. You know, (indiscernible).

21 **PRESIDING COMMISSIONER ENG:** So have I
22 missed anything? Anything else that you want to add?
23 We recognize that he has a lot of support letters but
24 I do want to add anything that's more specific
25 regarding employment or residential or financial
26 support, et cetera.

27 **ATTORNEY FOX:** I think we've covered what

1 exists.

2 **PRESIDING COMMISSIONER ENG:** Okay.

3 Satisfied with that, Mr. Losno?

4 **INMATE LOSNO:** Yes. I just want you to know
5 that my dad is there. He's the one -- I -- it sounds
6 selfish but he -- you know, it's like you said.
7 You're right. It is expensive. It is difficult.
8 Everything's difficult and you have to try. I mean,
9 I'm not -- it might sound boldly cold but my dad's
10 willing.

11 **PRESIDING COMMISSIONER ENG:** Okay.

12 **INMATE LOSNO:** And I need him. My dad will
13 support me.

14 **PRESIDING COMMISSIONER ENG:** Okay. Well, we
15 went out Penal Code Section 3042 Notices and those
16 notices go to agencies that have a direct interest in
17 your case. And I didn't see in our packets that we
18 had any letters in response. However, we do have a
19 representative of the San Mateo County District
20 Attorney's Office, who is present, who I'm sure will
21 be making a statement regarding your parole
22 suitability prior to us going into our deliberations.
23 So I'm going to ask Commissioner Star if she has any
24 further questions to ask you right now?

25 **DEPUTY COMMISSIONER STAR:** No, none.

26 **PRESIDING COMMISSIONER ENG:** All right. At
27 this point in time, I'm going to ask the

1 representative from the District Attorney's Office,
2 Mr. Good, if he has any questions he would like posed
3 to Mr. Losno through the Chair?

4 **DEPUTY DISTRICT ATTORNEY GOOD:** I -- yes,
5 thank you. Yeah, just a few questions about your life
6 offense, Mr. Losno. And I pose them to you?

7 **PRESIDING COMMISSIONER ENG:** Correct.

8 **DEPUTY DISTRICT ATTORNEY GOOD:** All right.
9 I noticed from reading the Sentencing Hearing that
10 there was a statement by the Prosecutor, Mr. Wagstaff
11 (phonetic), who said that both Mr. Garcia and Mr.
12 Bustamonte said that Mr. Losno was the leader of the
13 group. I'm just wondering, does he believe he was the
14 leader of the group that day?

15 **PRESIDING COMMISSIONER ENG:** Do you
16 understand that question, Mr. Losno?

17 **INMATE LOSNO:** Yes, I do.

18 **PRESIDING COMMISSIONER ENG:** Okay. Please
19 respond to the Panel.

20 **INMATE LOSNO:** No. I was not the leader of
21 the group. I just followed the group of guys that
22 came out the car.

23 **PRESIDING COMMISSIONER ENG:** Direct your
24 response to the Panel.

25 **INMATE LOSNO:** Oh. I just followed the guys
26 that came out of the front seat. I was in the back
27 seat. I followed the older guy, too.

1 **PRESIDING COMMISSIONER ENG:** Why would they
2 state that they thought you were the leader?

3 **INMATE LOSNO:** Maybe because I was bigger.
4 I was bigger than everyone in the car. As I stated
5 earlier, Mr. Garcia was older but I was bigger. I
6 stood out.

7 **DEPUTY COMMISSIONER STAR:** How much older
8 was Garcia?

9 **INMATE LOSNO:** I think he was in his
10 twenties. He had just got out of Tracy DBI.

11 **DEPUTY COMMISSIONER STAR:** Who got out
12 first?

13 **INMATE LOSNO:** The front members of the car.
14 Chino, which is Mr. Garcia. Spanky was Mr. Bustamonte
15 and myself.

16 **DEPUTY DISTRICT ATTORNEY GOOD:** I also see
17 in the Sentencing Hearing that the Prosecutor says
18 that both Mr. Bustamonte and Mr. Garcia say that
19 Mr. Losno swung a baseball bat at the head of the
20 victim. I wondered if Mr. Losno believes he did swing
21 at the head of the victim?

22 **INMATE LOSNO:** More than likely so. I
23 probably hit him in the head, too. I can't remember.
24 It was all fast. I was impaired, too. Like I said
25 earlier, we were drinking. I can't actually remember
26 me striking him in the head but I believe that
27 anything is possible that day. I probably did it, I

1 just don't remember but it's possible.

2 PRESIDING COMMISSIONER ENG: Okay.

3 INMATE LOSNO: More than likely so.

4 PRESIDING COMMISSIONER ENG: Okay, Mr. Good.

5 INMATE LOSNO: In his statement he made to
6 the Probation Department back in '83, he seems to make
7 a statement where he says -- he does make a statement
8 where he says that:

9 "Before Chino struck the guy, I hit him in
10 the legs."

11 So it sounds like that he was the first person to
12 strike the victim. Is that correct?

13 PRESIDING COMMISSIONER ENG: Sir?

14 INMATE LOSNO: I can't remember who got
15 there first but I remember, like I said earlier, I hit
16 him in the legs. I hit him in the ankles. And he
17 said, "Okay, that's it." And that's when I started to
18 walk away and I ran back to the car.

19 PRESIDING COMMISSIONER ENG: So you don't
20 recall what -- was Mr. Ruiz down on the ground when
21 you first struck him or was he standing?

22 INMATE LOSNO: No. He had just tumbled
23 over. He had just fallen running from all of us
24 coming out of the car.

25 PRESIDING COMMISSIONER ENG: All right. So
26 he fell down and you proceeded to immediately strike
27 him?

1 INMATE LOSNO: No, we chased him. He ran.
2 We ran after him.

3 PRESIDING COMMISSIONER ENG: But he fell
4 down.

5 INMATE LOSNO: He fell down.

6 PRESIDING COMMISSIONER ENG: And then you --

7 INMATE LOSNO: And then we got there.

8 PRESIDING COMMISSIONER ENG: And you
9 approached him and while he was down, you hit him?

10 INMATE LOSNO: Yes.

11 PRESIDING COMMISSIONER ENG: But you do not
12 recall, or do you, if you hit him first?

13 INMATE LOSNO: No, because I was in the back
14 seat. The first two guys. I was in the back seat.
15 The two cars --

16 PRESIDING COMMISSIONER ENG: But you ran
17 after him. He had already fallen down.

18 INMATE LOSNO: Right.

19 PRESIDING COMMISSIONER ENG: The three of
20 you approached Mr. Ruiz while he was on the ground and
21 proceeded to hit him.

22 INMATE LOSNO: Right.

23 PRESIDING COMMISSIONER ENG: So who hit
24 first?

25 INMATE LOSNO: Chino hit him first.

26 PRESIDING COMMISSIONER ENG: And --

27 INMATE LOSNO: Mr. Garcia.

1 **PRESIDING COMMISSIONER ENG:** Mr. Garcia hit
2 him first?

3 **INMATE LOSNO:** Yes.

4 **PRESIDING COMMISSIONER ENG:** Or did it
5 happen very, very quickly where all three of you were
6 hitting? What happened?

7 **INMATE LOSNO:** It happened very, very
8 quickly but I followed them, so they got there first.
9 Mr. Bustamonte ran towards the store, towards the guy.
10 The guy was coming out of the store so that's when --
11 it happened so fast. Just from there, we just started
12 (indiscernible).

13 **DEPUTY DISTRICT ATTORNEY GOOD:** If the Chair
14 could ask him, which of the people had the golf club?
15 It's not clear to me.

16 **PRESIDING COMMISSIONER ENG:** Who had the
17 golf club?

18 **INMATE LOSNO:** Mr. Garcia had the golf club.

19 **PRESIDING COMMISSIONER ENG:** He did? All
20 right.

21 **DEPUTY DISTRICT ATTORNEY GOOD:** All right.
22 And I'm curious, if the Chair could ask him,
23 apparently he failed to appear for his sentencing for
24 about 20 months. The Court had given him two weeks to
25 get married yet he didn't appear for 20 months.
26 What's the reason he didn't appear for 20 months for
27 his sentencing?

1 **PRESIDING COMMISSIONER ENG:** What happened?

2 **INMATE LOSNO:** I did go. I did appear and I
3 was sentenced. And they were discussing seven -- I
4 mean, five, seven, eleven years and they sentenced me
5 to 15 years to life. There was a discussion I started
6 having with my attorney. Mr. Jenkins, the judge, he
7 got up and noticed that we were speaking and he asked
8 what was the problem. When I asked him, he gave me
9 two weeks to get married. He told me to go home. I
10 went home. He gave me two weeks to turn myself in. I
11 turned myself in at the (indiscernible) City/County
12 Jail and I forgot what floor it was where you go
13 through the booking process. I told them who I was
14 and I waited. They told me to go home due to the fact
15 that my paperwork was sent to the California Youth
16 Authority because the Judge had recommended me to go,
17 supposedly, to the Youth Authority, which I didn't
18 know.

19 **PRESIDING COMMISSIONER ENG:** Even though you
20 were 19?

21 **INMATE LOSNO:** I was 19.

22 **PRESIDING COMMISSIONER ENG:** Or 20 at the
23 time?

24 **INMATE LOSNO:** I had just turned 19. And
25 the reason why he recommended that, because I had no
26 previous arrests or record, juvenile or -- I'd never
27 been incarcerated in my life. So he recommended me to

1 go to CYA. He had said if they were to accept me, I'd
2 go to CYA but he had to sentence (indiscernible) to
3 sentence me to this sentence. He let me go home.
4 Like I told you earlier, I went to go turn myself in.
5 They -- the Sheriff's Department told me to go back
6 home because they didn't have my paperwork, due to my
7 paperwork being sent to CYA.

8 **PRESIDING COMMISSIONER ENG:** Mr. Good?

9 **DEPUTY DISTRICT ATTORNEY GOOD:** All right.
10 I'm curious then, when he did -- if they didn't have
11 his paperwork, after two weeks did he make any attempt
12 to contact the Court in the next 20 months? Or did he
13 wait until he actually was apprehended?

14 **INMATE LOSNO:** I spoke to my attorney, my
15 attorney at the time. His response was wait, leave.
16 I just stood there at that time. My second -- Maria
17 was pregnant with my second daughter and I did not
18 call the court or call the County Jail to say hey, I'm
19 still out here. I was living in San Lorenzo at the
20 time and (indiscernible) soon to be born. And at that
21 time, I was just too afraid that I was going to call
22 the department -- the police to come and get me, you
23 know. I just stayed there.

24 **PRESIDING COMMISSIONER ENG:** So are you
25 saying that your attorney had advised you to just
26 wait?

27 **INMATE LOSNO:** Wait and --

1 **PRESIDING COMMISSIONER ENG:** Or leave?

2 **INMATE LOSNO:** Or leave and I just stood
3 there.

4 **PRESIDING COMMISSIONER ENG:** Like leave the
5 state?

6 **INMATE LOSNO:** Leave. I just stood there
7 and I went back to my mom's house and took my
8 daughter's with me.

9 **PRESIDING COMMISSIONER ENG:** So when did
10 they -- did the police finally show up?

11 **INMATE LOSNO:** The police came and they
12 arrested me at my house, at my mom's house, after 20
13 months.

14 **DEPUTY COMMISSIONER STAR:** Was there a
15 warrant out there for you at that time?

16 **ATTORNEY FOX:** If I may quote from the
17 Sentencing transcript, Mr. Palacios (phonetic) was
18 Mr. Losno's attorney.

19 **INMATE LOSNO:** That was my attorney.

20 **ATTORNEY FOX:** And in the question from the
21 judge, it says:

22 "You advised him there was no further
23 obligation to report in."

24 This is page four, line 25 is the response.

25 "No, Your Honor. At that point, as I
26 understood it, he was still out on bail.

27 Subsequently, I found out the bail had even

1 been exonerated. They knew that. The
2 family apparently became aware of that.
3 Even so, this man has not fled, Your Honor.
4 His obligation to remain available to the
5 Sheriff of this County. I think he
6 fulfilled that. That is what he was told to
7 do. That's what he did do."

8 So on advice of counsel --

9 **PRESIDING COMMISSIONER ENG:** Which is
10 exactly what Ms. Losno said. Okay, Mr. Good?

11 **DEPUTY DISTRICT ATTORNEY GOOD:** I believe,
12 though, in spite of that Mr. Losno know -- knew by
13 reading the newspaper that he was wanted by the
14 authorities and still didn't turn himself in. Is that
15 correct?

16 **PRESIDING COMMISSIONER ENG:** Sir, is that
17 correct?

18 **INMATE LOSNO:** What, reading the newspapers?
19 I didn't turn myself in because I was scared to go to
20 jail. And my -- (indiscernible) was born and I mean,
21 I'm in love with my girl. I had my -- both my
22 daughters. At that time, when my grandfather passed
23 away. There's no way of thinking back then am I going
24 to be calling the police to come and get me and take
25 me to prison. And it sounds -- I mean, it was wrong
26 but at that time (indiscernible). I'm a kid in love
27 with my daughter -- my girl and I have my daughters

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1 and there was no way I'm going to say come take me to
2 jail and to be torn away from them. Now, of course,
3 it would be different. I mean, I'm a mature, grown
4 man. I know what's right and wrong but back then, I
5 wasn't about to. I had my daughters with me. I had
6 my kids. I was still -- it wasn't like I was out
7 there running around or anything. I was stuck in a
8 little room, even smaller than these cells right here.
9 Pale and afraid to come out of anywhere. I just -- I
10 was already re-incarcerated, which was being
11 incarcerated in a little room.

12 **DEPUTY DISTRICT ATTORNEY GOOD:** Thank you.
13 That's all I have.

14 **PRESIDING COMMISSIONER ENG:** Okay.
15 Counselor, do you have any questions to ask your
16 client?

17 **ATTORNEY FOX:** No, no questions. Thank you.

18 **PRESIDING COMMISSIONER ENG:** I hate to do
19 this but I've got to go back to some of your
20 responses. I don't feel that you've explained to this
21 Panel, okay, or given us an indication of what you
22 feel are really the causative factors that led you to
23 kill this young fellow or any indications of that.
24 Your pregnant girlfriend was sitting there. Another
25 person, who was an active gang member in a gang stayed
26 in the car. Yet, you got out and chased him and beat
27 him, along with the other two people. What drove you

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1 to do that? And did you ever think about

2 (indiscernible) at that time either?

3 **INMATE LOSNO:** As soon as that happened, my
4 door opened, I did not think of anything. I went with
5 -- it's -- there's no explanation. I went with the
6 flow, just without thinking, just reacted. And it
7 wasn't adrenaline. It wasn't deciding not to want to
8 be part of the group. I wasn't thinking. That's just
9 it. I wasn't thinking at that moment and I decided to
10 follow suit. It wasn't that I still had any type of
11 feelings for the gang. No -- was it the adventure at
12 that time? Yeah. Did someone see that, I mean,
13 happening? No. Did I stop and think that someone was
14 actually going to be killed and go that far? No. So
15 you know, knowing what peer pressure is, knowing what
16 stupidity is and to follow the crowd, that's what I
17 did. It wasn't done -- like I said, it wasn't
18 thought. I wasn't like let's go get Jorge. Let's --
19 it was just a spontaneous reaction, being ignorant,
20 being stupid, you know. And he didn't deserve that.
21 Not only him but his family, that area, that whole
22 community. Myself, my family. It hit everything
23 else. I know different now. I mean, that's what I do
24 now.

25 **PRESIDING COMMISSIONER ENG:** Okay. We're
26 going to move onto closing statements and we're going
27 to pass it on up to Mr. Good. Closing statements?

1 **DEPUTY DISTRICT ATTORNEY GOOD:** I think,
2 based on everything that I've heard, I don't really
3 think our office is going to take a position in this
4 case. I think I'll just say briefly, I don't think
5 Mr. Losno is being entirely forthright about what
6 happened in the crime because he was saying in 1983
7 that he was the first one that struck the blow, it
8 seems. Yet I can't help be impressed with everything
9 he's done since then, especially recently. That's all
10 I have to say.

11 **PRESIDING COMMISSIONER ENG:** Okay.
12 Counselor?

13 **ATTORNEY FOX:** Thank you. Normally at this
14 time I say I respectfully disagree with my colleague.
15 However, I would only encourage him to perhaps find
16 Mr. Losno suitable. And I would ask this Panel to
17 find Mr. Losno suitable because he is. He does not
18 pose an unreasonable risk of danger to the public. In
19 fact, he would be an asset to any public community
20 where he would find himself. He has been through a
21 period of adjustment with his last 128-A, yeah, 14
22 years ago and that's a counseling chrono. It's not a
23 disciplinary write-up. His last disciplinary write-up
24 was over 18 years ago and I think that's a remarkable
25 accomplishment, having been in the various
26 institutions he's been in. He stays busy and
27 continues to improve himself, even though the Panel

1 doesn't always ask him to do that. He has sought out
2 a new plumbing vocation and he wasn't asked to do that
3 last time. And he does give back to his community.
4 The Board Report is supportive. The Psychological
5 Evaluation is supportive, as well, by Dr. Inaba. And
6 I think it's important in that regard to note that
7 Mr. Losno does use accepted dispute resolution
8 techniques insofar as he sought out Dr. Inaba to
9 correct what he felt were errors in an earlier report.
10 And in fact, those errors were corrected but he did
11 that in a peaceful, acceptable way. He has been the
12 victim of a stabbing for refusing to go along with
13 gang activities in the institution, not that that
14 alone would qualify him for parole. But I think it
15 conveys that this is a man now, not a youngster, who
16 is before you and is willing to stand on his own two
17 feet, make his own judgments and proceed in a peaceful
18 way and a productive way. Turning to his parole
19 plans, Mr. Losno has broad parole plans. He enjoys
20 the continued, sustained support of his family and
21 that's his mother, his father, brother, sister, as
22 well as his offspring. And they're not going to let
23 him fail and he's not going to fail them. He loves
24 them and by their sustained support over the years,
25 they've demonstrated that they love him, too, in spite
26 of everything that happens; visiting, moving and all
27 that in the prison environment. And I -- the words I

1 heard Mr. Losno speak earlier today was that he waits
2 for Friday. Well, we wait for Friday and we think
3 well, that's the end of the week. We're going to
4 watch football. We're going to have a beer; whatever
5 it is. But Mr. Losno waits for Friday because that's
6 when he gets to tutor the youth and I think that
7 speaks volumes about the man. So it would be
8 appropriate to find Mr. Losno suitable. I ask the
9 Panel to do that and I'll submit, unless there's
10 anything that Mr. Losno cares to add.

11 **PRESIDING COMMISSIONER ENG:** Okay.
12 Mr. Losno, this is your chance, if you choose to, to
13 give a final statement regarding your parole
14 suitability.

15 **INMATE LOSNO:** I believe I should be found
16 suitable because I know what I'm doing in prison. I
17 know why I'm here and the significance of my crime and
18 what I did. I know the value of life. I know what
19 I'm doing in prison right now and what the definition
20 of murder is. I live with this. It's part of my
21 shadow every day. I know what I'm doing in prison. I
22 know there was a life taken. I think about this
23 because I think of my younger brothers. I think of
24 what could have happened to them, just sitting or
25 standing anywhere innocently and being attacked by
26 someone like that. And then again, everything that
27 I've experienced and thinking of Jorge and his mom and

1 I remember her (indiscernible) words and I took heed
2 to all of that. And knowing what I know now and
3 knowing the definition, knowing exactly what
4 (indiscernible) what led me to prison. Everything
5 that I've learned, with the tools that I've learned
6 here with all these programs and just witnessing how
7 life -- how fragile life is in here, there's no way I
8 would ever return back to prison. I don't want to be
9 wearing orange. I call them -- that's what I
10 (indiscernible). I don't want to be (indiscernible)
11 that migrate here every other week. I would be the
12 biggest hypocrite in the world, me coming back,
13 knowing after 25 years I can't see myself like that.
14 And that's why I give back to the kids and that's what
15 I want to do. These jobs that have offered me money
16 to work for them; even if they paid \$27 an hour, \$30
17 an hour. What I want to do now is to do a children's
18 program and being a facilitator and from what I've
19 heard now, it's an organized program on the streets.
20 It's been brought to my attention that you start out
21 with \$2,500 a month. I would take that because I
22 enjoy doing what I'm doing with the kids, even if I
23 did get \$30 an hour at some other job. I want to get
24 back to my family. I feel bad for what happened
25 (indiscernible). It's not only there in San Francisco
26 County or the Ruiz family, my family. There's more
27 people now who are suffering. There's my grandkids.

1 And that's why I continue to put forth all my energy.
2 I want my grandson, my granddaughters -- I have three
3 granddaughters and a grandson. And with the kids that
4 I get here every week, there's no way that I'd ever
5 come back. I put my life on the line in here and
6 other places and I stand firmly. I turned my life
7 over to (indiscernible) now and I'm against a lot of
8 stuff and I walk alone now. Me and these guys that at
9 one time I considered good friends; no more. I've
10 been casted out to sea. I stay in the room by myself.
11 I walk with myself and I continue to -- I like it like
12 that. I don't need no one to watch my back or for
13 protection. I don't need anyone to hang around. I'm
14 happy doing what I'm doing, working with kids. My
15 desire is to go home and help raise my grandkids since
16 I couldn't do that with my daughters. Because there's
17 no way that I'll forget why I'm in prison. I've never
18 been incarcerated at any level of my life. There's a
19 big difference. I wish I would have learned a lot
20 earlier, maybe doing something else, so I would know
21 the significance of what it is to wear a pair of
22 handcuffs. And I had to learn about the biggest crime
23 of all, it's 187. There's no way. I would never,
24 never raise my hand to anyone else and I haven't since
25 that day. I'd rather receive the blows. To other
26 people, it might sound cowardly or weak. Or even a PC
27 case (indiscernible). I'd rather receive that. I

1 don't want to ever be involved in that type of
2 scenario and I don't want to ever hurt anyone else
3 again. But it's my desire to get back to the
4 community and I know I would be an asset out there. I
5 know I can change and I know that because part of Ruiz
6 memory hasn't gone or been forgotten. I still keep
7 that. That's one of my most (indiscernible). That's
8 why I keep on pulling forward.

9 PRESIDING COMMISSIONER ENG: Okay. Anything
10 else?

11 INMATE LOSNO: That's it.

12 PRESIDING COMMISSIONER ENG: We'll now
13 recess for deliberations. The time is 3:58.

14 R E C E S S

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1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER STAR: Okay, we're on
4 record.

5 PRESIDING COMMISSIONER ENG: Okay. The time
6 is now 4:22. And for the record, everyone who was in
7 the room prior to deliberations has since returned in
8 the matter of Rafael Losno. The Panel has reviewed
9 all of the information received and relied on the
10 following circumstances in concluding that the
11 prisoner is not suitable for parole and would pose an
12 unreasonable risk of danger to society or a threat to
13 public safety if released from prison. The Panel
14 finds that the commitment offense was carried out in a
15 very cruel and callous manner, as the victim, a
16 15 year old, was basically beaten to death with
17 baseball bats and a golf club, as he was -- after he
18 had tripped and fallen to the ground. It was carried
19 out in a very dispassionate and calculated manner, as
20 Mr. Losno said himself that they were riding in a car
21 and the car turned around after some hand signals,
22 gang hand signals went back and forth. And I believe
23 it was three of the folks from Mr. Losno's car got out
24 of the car armed and went after two people from the
25 other gang, one of which was the victim, the 15 year
26 old victim. Carried out in a manner, which

1 demonstrates a very -- exceptionally callous disregard
2 for human suffering. A 15 year old, Mr. Ruiz, was
3 laying down on the ground and he was being beaten by
4 two or three -- I believe it was three men, including
5 Mr. Losno and then just left there and ended up dying
6 from the injuries three days later. The motive of the
7 crime is inexplicable and very trivial in relation to
8 the offense. I -- the Panel finds it very difficult
9 to even see what the motive was except for some words
10 that were exchanged based on two opposing gangs.
11 These conclusions are drawn from the Statement of
12 Facts, wherein on June 5, 1981, Jorge Ruiz at 15 years
13 of age, body was discovered by the Daily City Police
14 Department. He had been seriously wounded by blows to
15 the head.

16 **DEPUTY COMMISSIONER STAR:** Oh, hang on
17 again.

18 [TAPE 3 SIDE 1]

19 **DEPUTY COMMISSIONER STAR:** Okay. We're back
20 on record.

21 **PRESIDING COMMISSIONER ENG:** Okay. As I was
22 stating, Jorge Ruiz's body had been discovered and
23 seriously wounded with blows to his head, possibly
24 from a baseball bat and golf clubs. A witness at the
25 scene had also been attacked with baseball bats when
26 he attempted to intervene. It was discovered after

1 investigation that four members of the Little Park
2 Street Gang from San Francisco, Mission Park District,
3 attacked Jorge, who was a member of the Daily City
4 Force Gang. The autopsy disclosed cause of death as
5 serious injuries to the head caused by a baseball bat
6 and a golf club. It was learned that Mr. Losno, in
7 the company of Richard Garcia and Oscar Bustamonte
8 were identified as being the assailants. And again,
9 Jorge died three days after the assault without every
10 regaining consciousness. Regarding Mr. Losno's
11 institutional behavior, just wanted to note that his
12 misconduct while incarcerated includes 32 128-A
13 counseling chronos, the last one being on 10/01 for
14 disobeying orders. We recognize that there is
15 something in the C-file.

16 **DEPUTY COMMISSIONER STAR:** A chrono that
17 seems to clarify. It doesn't remove it but clarify.

18 **PRESIDING COMMISSIONER ENG:** Okay. And the
19 one before that was quite a few years earlier in
20 October of '92 for -- what's that? Dangerous
21 (indiscernible). Yeah, I had written something and I
22 can't quite read it. And then in reference to serious
23 115 disciplinary reports, Mr. Losno has seven on
24 record, the last one being in November of 1988 for
25 work stoppage. The Psychological Report, dated May 22
26 of '06 and authored by Dr. Michelle Inaba, I-N-A-B-A,
27 **RAFAEL LOSNO C-73252 DECISION PAGE 3 12/18/06**

1 we find is generally supportive with the exception of
2 one area. Where Dr. Inaba states under clinical
3 assessment, current mental status treatment needs,
4 that:

5 "He demonstrated a capacity for insight into
6 his own situation. He can be somewhat
7 lacking in insight into the effect of his
8 decisions upon others."

9 And then later on at the end of that paragraph:

10 "He also seemed to only have a partial
11 understanding of the impact of his crime on
12 the woman who was with him at the time."

13 And after a lot of questioning, Mr. Losno admitted
14 that he really -- in terms of the causative factors
15 that led you to do what you did in sort of following
16 the others. You had indicated to us that you had a
17 tendency to minimize some of your actions, as well as
18 it made us really wonder what was going through your
19 head in terms of just going along and ending up doing
20 this life crime. Regarding your parole plans, sir, we
21 give you credit for having the parole plans. However,
22 we find that some of your letters, important letters
23 are outdated and they're not specific enough. And
24 again, the Panel highly recommends that you come into
25 your hearing with the most recent letters possible.

26 And we feel that you -- even though you have a litany

1 of support letters, to have a few very, very specific
2 letters of direct support is in your best interests.
3 In other words -- and I said this to you earlier.
4 That letters from your family that are offering very
5 specific support, such as your own room in a home,
6 what type of financial support are they going to give
7 you? Is there, you know, health -- medical/health
8 benefit support that they can provide, transportation?
9 And then also with the employment, you know, have it
10 be very recent and very specific about what these
11 potential employers are going to be hiring you for.
12 And we understand for -- you're lucky because you do
13 have people. You have family, that are offering you
14 specific jobs. Many inmates don't have that and it's
15 very, very difficult to get specific job offers while
16 you're being incarcerated. But if they could provide
17 more information and very, very specific about, you
18 know, what hours you're going to working and, you
19 know, more specifics about the jobs, et cetera. And
20 then the Panel does recognize that the outline that
21 you provided is very good. Regarding 3042 responses,
22 we do recognize that we do have a representative of
23 the District Attorney's Office of San Mateo County
24 present and he did not state that it's their position
25 to oppose parole at this time. In fact, the Office
26 was neutral on it. The Panel makes the following

1 finding. We fell that the prisoner needs therapy, if
2 available, and any and all types of self-help that's
3 going to enable you to face, discuss, understand and
4 cope with stress in a non-destructive manner. More
5 specifically, about the life crime and what led you to
6 it and to address more about what Dr. Inaba had stated
7 and the effect that your decisions have upon others.
8 Nevertheless, we feel -- again, progress -- until
9 progress is made, the prisoner continues to be
10 unpredictable and a threat to others. However, the
11 prisoner should be commended for -- I know it's right
12 here -- all the -- you know, the work that you've been
13 doing with youth. The -- obtaining your vocational
14 certificates in dry cleaning, paint and decorating and
15 we believe that you're near completion of your
16 vocational plumbing. And also that you stated that
17 you have three more classes to go with -- to get your
18 AA degree. And again, your participation in self-help
19 programs, such as Impact and Real Choices. However,
20 these positive aspects of your behavior do not
21 outweigh the factors of unsuitability. Sir, we've
22 given you a one year and it was not an easy decision.
23 And again, the -- you know, we recommend that you
24 remain disciplinary free. That if available, that you
25 continue to upgrade vocationally and educationally.
26 And that if available, you continue to participate in
27 **RAFAEL LOSNO C-73252 DECISION PAGE 6 12/18/06**

1 self-help and in any type of therapy programming.
2 That basically concludes the reading of the Decision.
3 And I'm going to ask Commissioner Star if she has any
4 additional comments to make.

5 **DEPUTY COMMISSIONER STAR:** No, I -- well,
6 two. I want to also reaffirm what Commissioner Eng
7 said about your accomplishments. Truly outstanding
8 group participation, self-help groups, contributing to
9 the outside from inside. A lot of self-development
10 here in terms of the vocations and education and
11 outstanding. I also though believe that there needs
12 to be more insight into your role in this commitment
13 offense, as well as your initial gang affiliation
14 inside the institution for the initial years. I think
15 the insight in that is still lacking and you could
16 benefit from a better understanding of that.

17 **PRESIDING COMMISSIONER ENG:** Okay. We wish
18 you luck, sir. The time is now 4:34.

19 **ATTORNEY FOX:** Will there be a new
20 psychological evaluation, inasmuch as you relied on
21 the comments of Dr. Inaba?

22 **PRESIDING COMMISSIONER ENG:** We didn't order
23 one because we found that it was generally supportive
24 except for those two areas. And that's why we asked
25 him to continue with his self-help and to be able to
26 address that.

1 ATTORNEY FOX: And how would you know if he
2 doesn't have an evaluation.

3 PRESIDING COMMISSIONER ENG: Well --

4 DEPUTY COMMISSIONER STAR: Because it's --
5 if I can -- if I may, Commissioner Eng?

6 PRESIDING COMMISSIONER ENG: Yes.

7 DEPUTY COMMISSIONER STAR: It's really based
8 on Mr. Losno's explanations of his commitment offense
9 and his gang affiliation. That's what the decision
10 makers made the decision on today. It was only
11 partially reinforced by the doctor's report. Some --
12 there was a comment or two in there but it was mostly
13 came from Mr. Losno's statements. Is that accurate?

14 PRESIDING COMMISSIONER ENG: That's correct.
15 That's correct.

16 DEPUTY COMMISSIONER STAR: Okay. Going off
17 record.

18 ATTORNEY FOX: Thank you.

19 --oOo--

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23 PAROLE DENIED ONE YEAR

APR 16 2008

24 THIS DECISION WILL BE FINAL ON: _____

25 YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO

26 THAT DATE, THE DECISION IS MODIFIED.

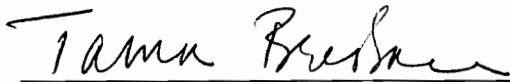
27 RAFAEL LOSNO C-73252 DECISION PAGE 8 12/18/06

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California.



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EXHIBIT "B"

LOSNO, Rafael C-73.

May 22, 2006

**MENTAL HEALTH EVALUATION
FOR THE BOARD OF PRISON TERMS
JUNE 2006 LIFER HEARING
SAN QUENTIN STATE PRISON**

PSYCHOSOCIAL ASSESSMENT

- I. Identifying Information: Mr. Losno is a 44-year old, Latin male who is serving a 15-Year to Life sentence for Second Degree Murder (P187), committed on May 5, 1981. The report is based on a review of the inmate's central files, medical record and a face-to-face interview conducted in the staff offices of San Quentin State Prison. Mr. Losno was informed of the limits of confidentiality in that information provided would be included in a report to the Board of Prison Terms. Mr. Losno stated that he understood this and was able to demonstrate an understanding of the purpose of the interview. He denied any need for assistance or for any adaptive aides and stated that he was fully able to participate in the interview. Only Mr. Losno and the examiner were present at the interview.

Mr. Losno's developmental history, family history, psychosocial development and sexual orientation, military history, educational history, employment and income history, and substance abuse history have been thoroughly reviewed and presented in previous reports and will not be repeated here. The reader is referred to the October 5, 2004, report by Dr. Goldyne for this information.

II. Plans if Granted Release:

Housing:

Mr. Losno plans to reside with family members if paroled to the community. He has housing offers from two sisters who live in San Mateo County. His father lives in San Lorenzo and has also offered to help him.

Employment:

Mr. Losno plans to work as a translator or in building construction. He has a letter of support offering employment as a translator with a tax accounting business. He has also been contacted by the San Mateo County police department about working with their youth programs. Mr. Losno states that he is sure that he will "be an asset out there."

Social Support/Services:

Mr. Losno describes his father as his "best friend." He and his father have become close during his incarceration and he feels that his father is fully supportive of him. His father is

LOSNO, Rafael C-73.

May 22, 2006

retired and plans to travel to the countries from which his family originated. He has offered to take Mr. Losno with him on this trip. Mr. Losno states that he has encouraged his family members to enjoy their lives as they spent many years with their lives on hold because of his offense. Mr. Losno is in contact with his daughters who visit him with his grandchildren. He hopes to be more involved in the raising of his grandchildren than he was able to be with the raising of his daughters.

CLINICAL ASSESSMENT

III. Current Mental Status/Treatment Needs:

Mr. Losno appeared to be his stated age. His appearance was remarkable for coal black hair and graying mustache. He is a very muscular man of average stature for his ethnicity. He was immaculately groomed and dressed in neatly pressed CDC inmate clothing. He appeared to be fully alert, and was oriented in all spheres. His thought was coherent, linear and logical with no evidence of thought disorder. His intellectual functioning appeared to be in the average range. Speech and flow of thought were within normal range. He is very expressive verbally and can speak spontaneously at some length. There was no evidence of mood instability or depressed mood. His judgement appeared to be adequate for most situations. He demonstrated capacity for insight into his own situation. He can be somewhat lacking in insight into the effect of his decisions upon others. He remarked that he had been engaged to a woman and that his daughters became upset about this relationship. They pointed out to him that they had suffered a great deal because of his absence and felt they should be given more consideration in his life. He was able to understand this after it was pointed out to him. He also seemed to only have a partial understanding of the impact of his crime on the woman who was with him at the time.

CURRENT DIAGNOSTIC IMPRESSIONS:

AXIS I: V71.09 No Diagnosis
V71.02 Adolescent Antisocial Behavior (by history)

AXIS II: V71.09 No Diagnosis (narcissistic personality traits)

AXIS III: None acute or affecting mental health

AXIS IV: Stressors: Life Sentence

AXIS V: GAF = 78

III. Assessment of Dangerousness:

The following is a risk assessment and not intended to predict future dangerousness with complete accuracy. A risk assessment is based on enumeration of factors found to be statistically associated with a greater likelihood of violent behavior. Some individuals found to have a rating of low risk for violence, become violent, while individuals who have factors suggesting high risk for violence, may never commit a future violent act.

LOSNO, Rafael C-73.

May 22, 2006

A. In a Controlled Environment:

Mr. Losno has been disciplinary free since 1988. Mr. Losno had previously been identified as a Northern Structure member while in CDC. He denies that he was ever a Northern Structure member and states that he only assisted other gang members in non-violent activities such as handling mail. While he was an inmate at Pelican Bay, he witnessed violent assaults and stated that "that's when I cut. I decided that I was not going to be a part of this." According to Mr. Losno when approached to do a "hit" on another inmate, he refused resulting in his being stabbed while showering. He denies that he knows who stabbed him. His institutional record has been free of violence. Based on his institutional record and clinical presentation, he would be a low risk for violent behavior in a controlled environment.

If Released to the Community:

Prior to his commitment offense, Mr. Losno's only other offenses were Dumping Offensive Material (urine) and Resisting a Public Officer in 1981. He stated that the incident occurred when police attempted to break up a rowdy gathering of youth. He felt that the police were mistreating his girlfriend and resisted the officer's order to have him face the wall. He was hit by the officer with a billy club, and stated that "the police beat me up."

Other than his commitment offense, Mr. Losno has no history of violent criminal behavior in the community. He was never involved with the Court as a juvenile, and had no history of property crimes. He stated that his grandfather provided material things for him that he wanted, so that he never felt a need to steal. He stated, "My grandfather spoiled me."

Mr. Losno denied ever being physically abused in his family. He stated that his father taught him by example, rather than punishment. Mr. Losno stated that his parents argued and physically fought prior to their separation as a couple. He believes that his father would hit his mother, although he never saw his mother with injuries, and never observed his father beating his mother. He acknowledged that he was possessive and jealous while he was dating the mother of his children, as she was very attractive. He admits to striking her while they were dating. He stated that he loved her very much, and that there was possessiveness and jealousy on both sides. He denied being habitually abusive.

Mr. Losno has no history of involvement with guns in the community. His family did not own guns or use them for sport or target shooting. When describing his relationship to guns, Mr. Losno stated, "I'm afraid of them really."

Mr. Losno's background has very few factors associated with violent recidivism. He is a male with a history of alcohol use, and some intermittent abuse of alcohol. He had no record of alcohol or drug related offenses. He also had no history of violent crime or failure on supervised release. He does not view himself as a victim although he acknowledged being assaulted by other inmates. He has no recent history of loss of control or impulsive behavior. He does not have any psychiatric illness or paranoid delusions.

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While he has some personality traits that are maladaptive, such difficulty identifying with the feelings and needs of others, they are not severe enough to cause him distress, or impairment of functioning. His POR described him as presenting "little real danger to the community at the time of his arrest." He was also described as a "dependable and helpful son." Within the context of his family, he was a non-violent individual. He was caught up in gang conflict that was confrontational and if necessary, violent. This is substantiated by the fact that he and the other youth had items that could be used as weapons in the car with them, on the day of the offense. The POR also indicated a pattern of gang confrontations in that geographical area.

Mr. Losno is now a 44-year old man, it is hard to conceive of him being involved in the type of activity that led to his crime. He has backed away from gang involvement while in prison. There would be little incentive for him to realign himself with a violent organization, unless his involvement was different from what Mr. Losno has consistently presented.

Mr. Losno has continued to compile an impressive record of positive programming since his last consideration by the Board. While he is involved in a number of self-help, educational and volunteer efforts, he still carries the demeanor of a man who has spent many years incarcerated. One legacy of this experience is that Mr. Losno's personality structure is somewhat self-absorbed and self-serving. A review of his institutional record suggests that this may be the result of his years of incarceration as a Level IV inmate. He came into prison as a very young man, with no previous correctional experience. He was able to adapt through gang affiliation, and apparently has been able to move beyond that experience into more positive programming. Since his arrival at San Quentin, he has involved himself extensively in self-help and educational activities. He has also continued substance abuse intervention through participation in Overcomer's Outreach since 2003. Mr. Losno plans to continue to be involved with violence and crime prevention programs if released to the community. He sees himself as continuing his engagement with at-risk youth through volunteer work or employment. He has also remained in contact with his social support network in the community.

V. Clinician Comments and Summary:

1. Mr. Losno's account of his use of alcohol and/or drugs does not differ from the account contained in Dr. Goldyne's 2004 report. Mr. Losno understands that alcohol would be available at social gatherings in the community and that he would be encouraged by others to consume. He is also aware that he does not have a family history that is positive for alcoholism or drug addiction. He would anticipate the support of family members and friends in maintaining his abstinence.
2. While Mr. Losno acknowledges that he and his friends consumed alcohol and mescaline on the day of his offense, the crime seemed to be more an expression of youth gang values and culture. While it is likely that the event was *fueled* by the use of intoxicants, there is no reason to believe that the consumption of drugs or alcohol was a causative factor. The ages of the participants was also a significant factor.

LOSNO, Rafael C-732

May 22, 2006

3. Mr. Losno has a realistic parole plan, as well as offers of financial and social support in the community from his family members. He is also open to involvement with agencies that provide help to parolees. He is willing to continue his involvement in substance abuse prevention.
4. Given Mr. Losno's lack of prior criminal involvement in the community, any risk of future violence would not appear to be related to violent crime. It would be beneficial for Mr. Losno to engage in counseling with any romantic partner in order to ensure that he does not repeat the interpersonal violence that was part of his parent's marriage. Because of his lengthy incarceration, he has not had the opportunity to master adaptive relationship skills.
5. As the crime was largely developmental and situational in nature, the use of alcohol and/or drugs was only one contributing factor in the offense. However, Dr. Goldyne's recommendation that the possibility of drugs and alcohol as a factor in the crime warrants continued participation in twelve-step program, is a sound one. It applies equally to any risk of interpersonal violence.

The present examiner also agrees with Dr. Goldyne's conclusion that given his crime and his institutional record, Mr. Losno would be at low risk for violent recidivism compared to members of the inmate/parolee population. Comparing Mr. Losno's risk of future violent behavior to members of society who have no history of substance abuse, violence, or incarceration however, may be like comparing apples to oranges. Based on his exposure to violence in prison, Mr. Losno would be expected to be both better able to formulate a violent response, if needed, and also more skilled at avoiding violence than individuals with less exposure. Mr. Losno's institutional record would suggest that he is highly adept at avoiding violence in almost any situation. This would suggest that with the maintenance of abstinence, and denunciation of gang affiliation, he would be at low risk for violent recidivism in the community.

The Board members and others reading this document should be aware that this assessment is an opinion based on the examiner's clinical training and experience, and a review of the available data. It does not claim to be a standardized, validated assessment that would yield a result that would be ranked as low, medium or high in regard to the likelihood of future violence.



Michel Lynn Inaba, Ph.D.

5-22-06
Date

Dr. Thaba.

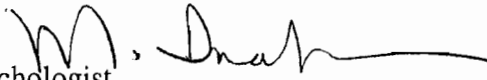
I write you this short Note to remind you, about some clarification regarding the psych report you wrote. I hope you remember my Name. Rafael A Rosno C-73252. We also spoke briefly on the stairs, leading down to the lower yard. My Lawyer, and I were very pleased with the report. However, My Lawyer, asked me to speak to you regarding some confusing remarks. She's asking. How do these statements apply to me? We don't really understand them.

On page (2) for example. "What instances lead you to believe, I lack insight into the effect of my decisions on others, besides my daughters' concern about my former fiancée? And on page (4) what personality traits are maladaptive, and how can I improve? Can you please, just expand on these statements. I would appreciate it very much.

Thank you
Rafael Rosno

TO: Rafael Losnos, C73252

FROM: M. Inaba, Ph.D.
CDC Contract Psychologist



DATE: August 1, 2006

RE: Attached letter (no date)

I hope that the following clarifies some questions you had about your most recent psychological evaluation for the Board of Prison Terms. "Maladaptive personality traits" are refers to an enduring pattern of inner experience or behavior that makes it difficult for a person to optimally respond to a situation. It is not a mental disorder and everyone has some maladaptive traits. As some people say, our greatest strength can also be our greatest weakness. An example might be someone who is very good at saving money, might also be someone who is therefore less generous than others.

People who are somewhat narcissistic tend to think well of themselves, but tend to be less tuned into the needs of others. Ideally we would all be in the middle on these qualities or traits, but we are not. This means, as you suggested, that we all have the need to work on the areas in which we might improve. For a person who tends to see himself, or herself as having few flaws a way of improving might be to consciously put someone else's interests ahead of their own and to practice doing this. For a period of time, with each action or decision, think "how would this impact (wife, child, friend, etc.) and then decide in that person's favor.

Overall, I'm sure your attorney found the report to be very positive.

Cc: M. Lyons, Senior Psychologist, San Quentin

EXHIBIT "C"

Katael A. Losno Jr
C-73252/2-13-65-
San Quentin S.P.
San Quentin, Ca.
94974



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LEGAL MAIL

